This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

Protestant

ZRMF

Trial and Sentence

OF THE

REV. STEPHEN H. TYNG, JR.,

Rector of the Church of the Holy Trinity, New-York,

BY THE

RIGHT REV. HORATIO POTTER, D.D.,

BISHOP OF THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF NEW-YORK,

For "Preaching and Reading Prayers in the City of New-Brunswick, New-Jersey, without the express permission of the Rev. Alfred Stubbs, D.D., and the Rev. Edward B. Boggs, D.D."

FEBRUARY, 1868.

LEHIGH UNIVERSITY LIBRARY
FORD COLLECTION

REPORTED BY WARBURTON, BONYNGE, AND DEVINE.

New-York:
JOHN A. GRAY & GREEN, PRINTERS, 16 & 18 JACOB STREET.

1868.

TRIAL

OF THE

REV. STEPHEN H. TYNG, JR.,

RECTOR OF THE CHURCH OF THE HOLY TRINITY, NEW-YORK

IN THE

CHAPEL OF ST. PETER'S CHURCH,

NEW-YORK, FEBRUARY, 1868.

N.Y. PUBLIC LIBRARY
FORD COLLECTION.

REPORTED BY

WARBURTON, BONYNGE & DEVINE, STENOGRAPHERS,

No. 37 Park Row, New-York

New-York:

JOHN A. GRAY & GREEN, PRINTERS, 16 & 18 JACOB STREET.

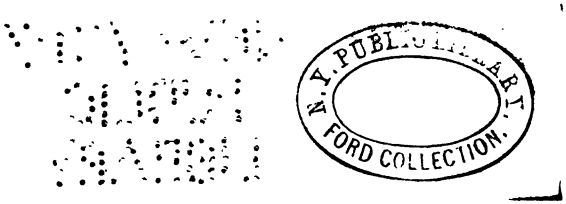
1868.

THE NEW YO
PUBLIC LIBRA
525727
ASTOR, LENOX AND
TILDEN FOUNDATIONS.
1900.

ENTERED, according to Act of Congress, in the year 1868, by

STEPHEN H. TYNG, JR.,

In the Clerk's Office of the District Court of the United States for the Southern District of New-York.



N.Y. PUBLIC LIBRARY
FORD COLLECTION

TRIAL

OF THE

REV. STEPHEN H. TYNG, JR.

CHAPEL OF ST. PETER'S CHURCH,
NEW-YORK, January 10, 1868.

THE BOARD OF PRESBYTERS appointed for the trial of Rev. S. H. TYNG, Jr., met at twelve o'clock M.

PRESENT: Rev. Dr. BEACH, St. Peter's Church, New-York.
Rev. Dr. HOFFMAN, Grace Church, Brooklyn.
Rev. WILLIAM H. MOORE, St. George's, Hempstead.
Rev. SAMUEL HOLLINGSWORTH, Portchester.

The Respondent, Rev. S. H. TYNG, Jr., accompanied by Rev. Dr. TYNG, WILLIAM FULLERTON, Esq., and CORTLAND PARKER, Esq., as Counsel.

Rev. WILLIAM WALTON, D.D.,
Rev. SAMUEL M. HASKINS, D.D.,
Rev. R. S. HOWLAND, D.D., } *Presentors.*

EDGAR LOGAN, Esq.,
Counsel for Presentors.

Rev. ALFRED STUBBS, D.D.,
Rev. E. B. BOGGS, D.D., } *Complainants.*

Several members of the Vestry of the Church of the Holy Trinity, Clergymen and Laity of the Episcopal Church.

Rev. Dr. BEACH stated that the Rev. Dr. TUTTLE, of St. Luke's, one of the members of the Court, not being present, a messenger had been dispatched for him, who had returned with word that the Doctor was not at home, but had gone out with the impression that the

meeting of the Court would be at two o'clock. Section 4 of canon 17 provided that, if at the time appointed for the first meeting of the Board of Presbyters, the whole number of five should not attend, then those who do attend may adjourn from time to time, etc. They would therefore adjourn until two o'clock.

Mr. FULLERTON. Will the Court listen to an observation?

Rev. Dr. BEACH. The Court is not yet organized.

Mr. PARKER. Permit me to remark, I have had my attention directed to this canon, and if you can adjourn from time to time, it strikes me you may consider as to the time and place of such adjournment. I beg leave, if the members of the Court differ from me in that matter, to ask the favor of the individual members of the Court, that they will listen to an observation or two, which possibly may affect their minds on this same question of adjournment.

Rev. Dr. BEACH. As I understand this section of the canon, the Court is not, as yet, constituted for proceeding in this case.

Mr. FULLERTON. But the power of adjournment is vested in individual members, and I understand the individual members propose to exercise that power. Now, the time to which an adjournment shall be had is what we respectfully desire to be heard upon; because it is due to the members of the Court assembled to state that we shall desire an adjournment for some little time, for the purpose of making suitable preparations. It would not be right upon our part to withhold that information from the members of the Court, and we make it known at the earliest opportunity.

Rev. Dr. BEACH. All this will be proper to be stated before the Board when constituted. They then will have the same power to adjourn which members of the Court individually have now.

Mr. FULLERTON. Inasmuch as there are pressing engagements this afternoon at three o'clock, we suppose that members of the Board might exercise the right of adjournment at once to some future day, at which time the absent member of the Court would be present. It would save time and be more convenient to listen to the application to adjourn now, than to wait until two o'clock and then listen to it, besides allowing us to go to our respective engagements for the afternoon.

Rev. Dr. BEACH. The object of this section, as I understand it, is to give time to the individual members of the Commission to fill up their number. We have reason to believe the absent member will be here at two o'clock, and perhaps before. We think it best to adjourn to an hour when he will be present.

Mr. PARKER. If the individual members will allow me to say, I have consented to come here and appear before this Board as one of the counsel for the respondent.

Rev. Dr. BEACH. We have no power to act upon any suggestion of counsel. We are simply here as any individuals in court at present.

Rev. Dr. TUTTLE here came in, and, the Court being full,

Prayer was offered by Rev. Dr. BEACH.

The Board then organized, by the appointment of Rev. Dr. BEACH as Chairman, and Rev. WILLIAM H. MOORE as Secretary.

Rev. Dr. BEACH. The Court appointed by the Bishop for the trial of this case is now ready to proceed—the full number being present—upon the following charge and specifications:

TO THE RIGHT REVEREND THE BISHOP OF NEW-YORK.—The undersigned, a committee appointed by the Standing Committee of the diocese of New-York as the ecclesiastical authority of said diocese, under the provisions of canon 17 of said diocese, to examine the case of the Rev. Stephen H. Tyng, Jr., a Presbyter, canonically resident in said diocese, upon a certain notice given by the said Standing Committee, by the Right Reverend the Bishop of New-Jersey, having made such examination, and there being, in their opinion, sufficient grounds for presentment, do hereby present the said Rev. Stephen H. Tyng, Jr., to you for trial upon the following charge and specifications:

Charge. Violation of Sec. 6 of canon 12 of title 1 of the Digest of the canons for the government of the Protestant Episcopal Church in the United States of America, passed and adopted in general convention in Richmond, Va., October, 1859, by which section of the said canons it is provided that "no minister belonging to this church shall officiate, either by preaching, reading prayers, or otherwise, in the parish or within the parochial cure of another clergyman, unless he have received express permission for that purpose from the minister of the parish or cure, or, in his absence, from the church-wardens and vestrymen or trustees of the congregation, or a majority of them."

Specification 1. In this, that the said the Rev. Stephen H. Tyng, Jr., did, on the morning of Sunday, the 14th day of July, 1867, within the corporate bounds of the city of New-Brunswick, in the diocese of New-Jersey, which city then constituted the pastoral care of the Rev. Alfred Stubbs, D.D., and the Rev. Ed. B. Boggs, D.D., ministers of the Protestant Episcopal Church, duly settled and in charge of congregations in said city, officiate by preaching and reading prayers within the said parochial cure of the said Rev. Alfred Stubbs, D.D., and of the said Rev. Ed. B. Boggs, D.D., without their permission, or the permission of either of them, or of the church-

wardens and vestrymen, or trustees of either of their congregations, or of a majority of such wardens and vestrymen, or trustees.

Specification 2. In this that the said Rev. Stephen H. Tyng, Jr., did, on the evening of the day aforesaid, within the corporate bounds of the city aforesaid, officiate by preaching and by reading prayers within the said parochial cure of the said Alfred Stubbs and Ed. B. Boggs, without their permission, or the permission of either of them, or of the church-wardens and vestrymen, or trustees of either of their congregations, or of a majority of such church-wardens and vestrymen, or trustees.

Dated at the city of New-York, the 7th day of October, A.D. 1867.

(Signed) WILLIAM WALTON, D.D.,
SAMUEL M. HASKINS, D.D.,
R. S. HOWLAND, D.D.,
WILLIAM E. CURTIS,
R. W. HARRISON.

Rev. Dr. BEACH. Is it desired by the parties interested in this case that this trial should proceed in public?

Mr. PARKER. Undoubtedly, so far as counsel can speak for the accused.

Rev. Dr. BEACH. So far as the Court is concerned, I believe there is no objection to the proceedings being public.

Rev. Dr. WALTON asked that the accused be called upon to plead to the presentment.

Rev. Mr. TYNG. I am instructed that the canon requires no plea.

Rev. Dr. WALTON. I should say, then, that he denies the facts stated in the presentment. Before we go to trial, I take it there must be an issue joined. We want to know whether it is an issue of law, or of law and fact. If the facts are conceded, we can go at once to a consideration of the law. As presentors, we have to take the initiative; and as this is considered by some an "obscure and unhealthy" part of the city, if we have to produce witnesses, we do not want to bring them here until the case is set down for a certain day.

Rev. Dr. BEACH. The respondent is considered by the canon as denying the charge.

Rev. Dr. WALTON. Then we will have to prove the question of fact.

Mr. PARKER. It seems to me this is very plain. The canon reads that, if the accused shall not confess before the Court, he shall be considered as denying the charges; that puts every thing in issue.

The SECRETARY. Then I enter that the respondent denies the charges.

Mr. FULLERTON. Not so.

Rev. Dr. BEACH. We have no notice that the respondent has confessed the truth of the charges, and therefore, under the canon, he must be considered as denying them.

Mr. FULLERTON. Under the canon, that is correct.

Rev. Dr. BEACH. The court is now ready to hear any facts which the presentors are ready to present.

Rev. Dr. WALTON. I move that the Court adjourn to Thursday next, at ten o'clock, in order that we may have witnesses here, and proceed to the trial. If that day does not suit the gentlemen on the other side, some other day may be agreed upon.

Mr. FULLERTON. I am obliged to the gentleman for that suggestion. It would be inconvenient, if not impossible, for me, as one of the counsel of Mr. Tyng, to be present on that day. On Monday morning I am under the necessity of going to Albany, to attend the Court of Appeals, which is now sitting. My cases have been postponed to that day. How long I may be absent I can not tell; probably up to Thursday. It would be very agreeable if the Court could adjourn to a longer day. My associate will state his engagements.

Mr. PARKER. The court of the county where I live has just opened, and I am needed there every instant, and for some time to come. Other engagements in the courts of New-Jersey, some of them of a very important nature, are pressing on, and will interlace themselves with those in the courts to which I have referred; so that I can not see my way clear to bestow any attention on this case for some time hence; and the case, so far as I have been able to look into it, is one which demands on my part much more preparation than can be made in a very short time—a research into matters not usually within my experience. I respectfully suggest to the Court and presentors here the 10th of February as a day which would probably suit all parties. I have conversed with my associate, and find that it will suit him.

Mr. FULLERTON. It having been suggested that this is "an obscure and unhealthy part of the city," when the Court comes to consider the place of adjournment, we will beg leave to make a suggestion on that subject.

Rev. Dr. WALTON. On behalf of those who live in this part of the city, I believe I may assure strangers that they need not be frightened. What time shall we name in the morning? Eleven o'clock?

Mr. FULLERTON. We regard eleven o'clock as a very healthy hour to adjourn to.

Rev. Dr. BEACH. Would Tuesday, February 4th, be too early a day to name? It is thought that by letting it go so late as to the 10th, the trial would be prolonged into Lent, which it is desirable to avoid.

Mr. PARKER. That is the very day on which the Court of Chancery meets in New-Jersey, where I must attend; and I selected the 10th, to get rid of the first week of that court. I apprehend this cause will not take a very great while to try.

Rev. Dr. HOWLAND. I would make one suggestion, and that is to appeal to my reverend brother in reference to the question of fact in the case. This is a very unpleasant business for all of us here, and we are anxious to take as little time and go through with our work as quickly as possible. Now, what has been done I am very sure my brother has done from a sense of duty. It is nothing he is ashamed of—something he has gloried in, rather; and his intention, as I understand it, has been to test the principle—to test the interpretation of the canon. Now, if we could waive the question of fact—a thing that has been done in open day, and one which, as I say, my brother glories in having done—it would facilitate matters very much, indeed. Then I think, as the counsel has stated, the question would take but a very short time to decide. The longer this thing is protracted, the more ill feeling, perhaps, would be occasioned. Certainly none of us would be the better of remaining here so many more days than are absolutely necessary. I do not like to see a denial — even a legal denial — of the facts which my brother knows to be true. Therefore, I make an appeal to him to waive this question of a denial of the facts, and let us proceed at once to the merits of the case.

Mr. FULLERTON. The suggestion which has been made undoubtedly is made with the best of motives, and is one which we ought, if we had not heretofore considered it, to consider now. We have considered it heretofore; and although we do not desire to embarrass this Court in any degree, or to put the presentors here to the inconvenience of producing witnesses, yet in our view of the case our defense can not be presented in any way so well as by letting matters stand as they are now. I may be permitted to state that, in order to present the defense, and to test this principle which has been spoken of, it will be necessary for us to ask the witnesses produced on the part of the presentors a few questions; and the Court will readily see, and the gentleman who made the suggestion will readily see, that it is more convenient for us to put those questions by way of cross-examination to witnesses brought here on the other side than to produce those witnesses ourselves; so that it will not involve any more delay to let matters stand as they are now, and proceed to prove the facts as alleged. Wholly for the reason I have stated, and no other, we must respectfully decline to accede to the proposition.

Rev. Dr. BEACH. We certainly wish to do every thing we can for the convenience of all parties in this case. Therefore the Court,

when it adjourns will stand adjourned to the 10th day of February, at ten o'clock in the morning. The days will then be much longer than they are now, and sitting *from ten to three* may help us to get through this business the more rapidly.

Rev. Dr. WALTON suggested it might be difficult to get witnesses from New Jersey here at that hour.

Mr. FULLERTON. I beg to state in this connection that the Harvard Rooms, at the corner of Sixth Avenue and Forty-second street, are at the disposal of the Court; or, if the Court prefer, the Church of the Holy Trinity, or Sunday-school attached, if thought desirable to adjourn to that place, which I think would be found more convenient, and not so "obscure or unhealthy."

Rev. Dr. BEACH. It certainly is a matter of no sort of importance to me whether the Court meet in this building or any other; but the majority of the members of the Board prefer that when we adjourn we adjourn to meet in this place, on Monday, the 10th day of February, at ten o'clock A.M.

SECOND DAY.—FEBRUARY 10, 1868.

PRESENT: Rev. Dr. BEACH, *Chairman.*
Rev. Dr. TUTTLE,
Rev. Dr. HOFFMAN,
Rev. S. HOLLINGSWORTH,
Rev. W. H. MOORE,
Presbyters.

Rev. Dr. TYNG,
Hon. WILLIAM FULLERTON,
CHARLES TRACY, Esq.,
CORTLANDT PARKER, Esq.,
Counsel for Respondent.

S. P. NASH, Esq., and
EDGAR LOGAN, Esq.,
Counsel for the Presentors.

The CHAIRMAN. We wish to announce that we have appointed Rev. George B. Draper, Rector of St. Andrew's Church, Harlem, to be Clerk of the Court.

The Court is now open; but, before proceeding to the business of the day, I have a letter which I wish to read. It is as follows:

"OFFICE OF JAY COOKE, SUBSCRIPTION AGENT,
114 SOUTH THIRD STREET, PHILADELPHIA, Feb. 5, 1868.

"REV. AND DEAR SIR: I send by mail to your address to-day a copy of the sermon recently preached by the Rev. Richard Newton, D.D., and I pray you to read this carefully and prayerfully.

"You are now engaged in trying the Rev. Stephen H. Tyng, Jr., for an alleged breach of canon law, when, at the same time, if I understand it, Bishop Potter does not hesitate to enter the walls of St. Albans, recognizing the Romish practices enacted there, by confirming a class. A large number of laymen are in full sympathy with the cause of Mr. Tyng, and my impression is that, upon an intelligent understanding of the case, three fourths of the laity would be on his side.

"I have felt it my duty to plead with you that you will not allow any considerations to lead you to such a decision in this case as will inevitably result in still further differences in our loved Church.

"With great respect, truly yours, JAY COOKE.

"Rev. ALFRED B. BEACH, D.D., 346 West Twentieth street, New-York."

At the top of the letter was written the words, "Private, although I have felt it my duty to address a similar letter to each of the other members of the Board."

I wish to state that is the only attempt that has been made from any quarter to influence this Court, and we have felt it our duty to lay this letter before all concerned, in order to protect ourselves from any similar interference hereafter. The Clerk will please enter this letter on the records of the Court.

Are the presentors ready to go on?

Rev. Dr. WALTON. We are ready, sir. I wish to state in behalf of the presentors that Mr. Stephen P. Nash has been associated with the presentors in this case.

The RESPONDENT. I wish to state that Mr. Charles Tracy has been associated with my counsel.

Mr. LOGAN. May it please the Court, this tribunal, constituted according to the laws of the Church, is here assembled for the purpose of listening to the proofs to be adduced by the Honorable Board of Presentors in support of the charges which they have been called upon to make against the Rev. Stephen H. Tyng, Jr. The offense charged against this gentleman was committed in the neighboring Diocese of New-Jersey, and in the city of New-Brunswick, an incor-

porated city under the laws of the State of New-Jersey, and having its boundaries defined by the law. In that city there was originally but one Protestant Episcopal church, which was chartered, as I am informed, by King George the Third, and for a great many years, and until about the year 1863 or 1864, there was no other Episcopal parish in that city. About that time the Rev. Alfred Stubbs, D.D., then rector of Christ Church, was desirous of founding a mission church in the lower part of the city, deeming that by so doing he would contribute to the moral and religious welfare of the inhabitants of that part of the city. He ministered there himself with the aid of others until about the year 1866, when the parish formed by that chapel, and known as St. John the Evangelist, was duly incorporated under the laws of the State of New-Jersey, and the Rev. E. B. Boggs, D.D., was thereupon called as the rector of that parish, and entered upon his duties as such; and in the year 1867 that church so organized made its first report, as required by law, and that report was entered upon the Convention Journal.

At the time of this offense as charged, the city of New-Brunswick was therefore divided into two parochial *cures* or parishes—one of Christ Church, Rev. Dr. Stubbs, and the other, St. John the Evangelist Church, Rev. Dr. Boggs. Some time in the week preceding the 14th of July, 1867—I think it was on Thursday, the 11th of July—there was an announcement, whether by advertisement or by regular announcement on the part of the paper itself, I do not know, for I have not seen it; but in one or other of these forms there was an announcement that the Rev. Stephen H. Tyng, Jr., would officiate in a church known as St. James's Methodist Church, situate on Bayard street; and I think that if the Court would consider that at my right is the Raritan River, running a straight course; in the centre, Christ Church; then at my left, almost at right angles, is St. James's Methodist Church, situate, as I believe, about four hundred yards from Christ Church; almost immediately opposite to St. James's Methodist Church is situate the rectory of the Rev. Dr. Stubbs, also on Bayard street. The announcement made was, that the Rev. Mr. Tyng would preach or officiate in that church on the ensuing Sunday. This announcement being made publicly, the Rev. Dr. Boggs, who was then in the city, (Rev. Dr. Stubbs being, as I am informed, absent, accompanying the Bishop of New-Jersey on an ordination tour,) felt it his duty to go and see Dr. Stubbs, and inform him of this announcement having been made. He did so. As the letter which will be produced in evidence will show, Dr. Stubbs consulted with the Bishop of the Diocese of New-Jersey, and as the result of that consultation, he indited a letter to Rev. Stephen H. Tyng, Jr.—a letter which I will read in evidence as a part of this case. In that

letter he stated that this announcement had been communicated to him by Rev. Dr. Boggs, and that in consultation with the Bishop it was forbidden that any such services should take place by Rev. Stephen H. Tyng, Jr., and requested him, for the sake of unity in the Church and for the sake of peace among the brethren, to desist from the purpose he had announced. That letter, I shall be able to show, was copied, and the copy compared with the original, and the original handed to Rev. Stephen H. Tyng, Jr., on the Saturday preceding the 14th of July, 1867. I shall then have further to show, as a part of this case, that at St. James's Methodist Church, on the ensuing Sunday and during the usual church hours, the Rev. Stephen H. Tyng, Jr., not being in a gown or surplice, was, in company with other ministers not of the Protestant Episcopal Church, in the place from whence ministrations were had in that church; that these ministers officiated in part, and he officiated in part, he reading prayers which we believe we shall be able to show were taken partly from the Book of Common Prayer, and afterward he preached to the congregation there assembled. In the evening of the same Sunday, also during the usual church hours, Mr. Tyng again appeared in the same place in company with those ministers, and again read prayers and preached. These are the facts upon which this presentment was made. The canon of the Church having been thus deliberately violated, it became, as a matter of course, the duty of the Rev. Dr. Stubbs and the Rev. Dr. Boggs, as overseers of the church, and as the gentlemen within whose parochial cures this violation of a canon had taken place under such circumstances, to call the attention of the Bishop of New-Jersey to the fact. They accordingly did so, animated by a sense of duty and by a sense of what was due from them to the Church. They acted not from any feeling of resentment or passion, but simply, as I say, from a sense of duty. The Bishop of New-Jersey thereupon made the legal complaint, which was communicated to the Diocese of New-York. The Bishop of this Diocese, I believe, was absent from the State at that time, attending the Pan-Anglican Convention, and the communication was laid before the Standing Committee of this Diocese. They took such action as they deemed necessary, and investigated the statements accompanying the charge; and those statements being full and ample, in their judgment, to justify such action, they called upon this Board of Presentors to take the subject into consideration, and take such action upon it as they should deem right. I believe that about this time the Bishop of the Diocese of New-York returned, and the subsequent action in this matter was had under his direction. This body of presentors, as I am informed, regarded these proofs and weighed them carefully, and as the result, they have presented this charge

against Rev. Stephen H. Tyng, Jr., in the words and figures now before the Court.

In conclusion, I have to say again, that, in presenting the facts of this case, this Board of Presentors are not to be regarded as acting in this matter at all from passion or prejudice, but that they, as a legally constituted body—a body constituted by the legal authority of the Church—in the discharge of their function have made this presentment, and now offer it to the Court with such proofs as they may be able to adduce.

I may state further that the presentment made by the Board of Presentors was returned to the Standing Committee, the Bishop of the Diocese not having then yet returned.

May I now ask what order the Court will make in regard to witnesses, and whether an oath shall be administered to them?

The CHAIRMAN. It is for either party to request that an oath should be administered to the witness. If either party make that request, we shall have to comply with it.

Mr. LOGAN. (Addressing respondent's counsel.) Do you require the witnesses to be sworn, gentlemen?

Counsel for RESPONDENT. Oh! no.

The CHAIRMAN. Inasmuch as the evidence of each witness is to be taken down in writing and signed by himself, it will perhaps be well for the Clerk, after he has written a question, to read it to the witness and take the answer.

TESTIMONY.

THOMAS N. DOUGHTY called; examined by Mr. LOGAN.

Q. What is your name and residence?

A. Thomas N. Doughty; New-Brunswick. New-Jersey.

Q. What is your occupation?

A. Civil engineer.

Q. How long have you pursued the same?

A. Twenty years.

Q. Where?

A. In various places—Brooklyn, New-York, New-Haven, and in New-Jersey.

Mr. LOGAN. I propose to offer in evidence at this stage, if the Court please, the volume of the Laws of New-Jersey of 1863, which contains the charter of the city of New-Brunswick which was in force at the time of this alleged offense. The charter is to be found at page 347.

Q. Have you a map of the city of New-Brunswick?

A. I have, sir.

Q. Will you please produce it?

A. (Exhibiting the map.) This is the official map of the city of New-Brunswick.

Q. Can you designate in that map the location of Christ Church in New-Brunswick?

A. Yes, sir.

Q. Please do so?

A. (Witness indicating the points on the map.) This is the Raritan river; this is Nelson street; that is George street; and *that* is Christ Church.

Q. Is that church situate within the boundaries of the city of New-Brunswick?

A. It is, sir; it is on the block bounded by Nelson, George, Church, and Paterson streets.

Q. Can you designate on that map the Church of St. John the Evangelist in New-Brunswick?

A. Yes, sir; it is in the block bounded by George street, Town lane, Nelson street, and Carmine street.

Q. Is that church situate within the corporate boundaries of the city of New-Brunswick?

A. It is.

Q. Can you designate on that map the Methodist church of St. James?

A. It is in Bayard street, on the block bounded by Bayard, Paterson, Schuyler, and the railroad.

Q. Is that within the corporate limits of the city of New-Brunswick?

A. Yes, sir.

Q. Can you state how far distant that Methodist church is from Christ Church?

A. I can give you the figures by referring to them.

Q. About how far?

A. I have occasion in my business to measure the streets, and I have a book in which I have the measurements taken; I have not referred to it before, but I can do so in a few moments. The distance from Nelson street to St. James's Methodist church is 1700 feet.

Q. Can you give me the distance or the approximate distance between Christ Church and St. John the Evangelist Church?

A. [redacted] feet.

CROSS-EXAMINATION BY MR. FULLERTON.

Q. Is the city of New-Brunswick divided into wards, and, if so,

how many are there of them, and what is their location, and how are the churches you have named situated in reference to such wards?

A. The city of New-Brunswick is divided into wards; there are five of them; Christ Church is in the Third Ward, St. John the Evangelist Church is in the First Ward, and St. James's Methodist church is in the Fourth Ward.

Q. Are there not six wards in the city of New-Brunswick?

Q. By Mr. PARKER. How old is that map?

A. This map was adopted by the Common Council in 1837.

Mr. PARKER. The charter was passed in 1863. That is King George's map. (Laughter.)

WITNESS. I was mistaken—there are six wards in the city of New-Brunswick. I have not had occasion to notice the number of wards until now, and I was not aware of there being six.

Q. (By Mr. PARKER.) Will you state the distance between St. James's Methodist church and St. John the Evangelist?

A. 3970 feet.

Mr. PARKER. I wish the witness would please mark on this map the location of these churches.

Mr. LOGAN. I wish to have the witness mark the location of Christ Church rectory.

Mr. NASH. How is the Christ Church rectory situated in reference to this Methodist church of St. James?

The WITNESS. I can designate it very nearly, though not exactly. That [marking the point on the map] is as near as I can mark it.

Q. That is on Bayard street, opposite to what?

A. Nearly opposite St. James's Methodist church. The church is on the corner of Schuyler and Bayard streets; the rectory is in Bayard street nearly opposite Schuyler—Schuyler street not running across Bayard street.

Q. And the rectory is almost nearly opposite St. James's Methodist church?

A. Yes, sir.

BY MR. FULLERTON.

Q. Who occupies the rectory?

A. I don't know, sir.

Q. Do you know who occupied it last July?

A. I do not, sir.

Q. Do you know where Dr. Stubbs resided in July last, or where he resides now?

A. I do not know where he resided in July last; he resides now in Kirkpatrick street.

Q. Not in the rectory?

A. No, sir.

Q. How far is that from the rectory?

A. I should think it might be in the neighborhood of 500 or 600 feet.

Q. Do you not know that the rectory which you speak of has been rented by Dr. Stubbs to the Methodist minister at New-Brunswick? (Laughter.)

A. I have heard, sir, that the rectory has been rented, but to whom I have not heard. I do not know of my own knowledge of its being rented, only from common report.

Mr. LOGAN. I purpose to offer now in evidence the Journal of the Eighty-fourth Annual Convention of the Diocese of New-Jersey, for the year 1867, held May 29th and 30th, 1867.

Mr. FULLERTON. I do not understand that it is competent for us to object to it if it is offered; but I would suggest to the other side whether it would not be better to put in evidence only such parts of it as are appropriate, unless in their judgment the whole of it is appropriate.

Mr. LOGAN. Then we offer, from the list of the clergy on the eleventh page of this Journal, this paragraph, in which Rev. Alfred Stubbs, D.D., appears as being a presbyter, among the list of presbyters. From the same list of clergy and presbyters, on page 15, I read the name of the Rev. E. B. Boggs, D.D., rector of the Church of St. John the Evangelist, New-Brunswick. From page 93 of this Journal I read to show that each of these churches, the church of Rev. Alfred Stubbs, D.D., Christ Church, and the church of which Rev. E. B. Boggs, D.D., is rector, the Church of St. John the Evangelist, New-Brunswick, made the usual report of their respective parishes to the convention. I now offer certain portions of the Journal of the Eighty-third Convention of the Protestant Episcopal Church of the Diocese of New-York, for the year 1866. I offer from page 16, in the list of the clergy, this paragraph: "Rev. Stephen H. Tyng, Jr., rector of the Church of the Holy Trinity, New-York." I also quote from page 204 to show that the Church of the Holy Trinity, New-York, Rev. Stephen H. Tyng, Jr., Rector, and Rev. William Van Wagener, assistant, made the usual parochial report to the convention.

ROBERT HOWELL called; examined by Mr. LOGAN.

Q. What is your name, and where do you reside?

A. Robert Howell; I reside in the city of New-Brunswick.

Q. Did you reside there in July last, and what business do you pursue? I speak in reference to the church.

A. I did reside there in July last; I was sexton of Christ Church.

Q. Who was the minister then in charge of Christ Church?

A. Rev. Alfred Stubbs.

Q. (Exhibiting a paper to witness.) Will you please look upon that letter?

A. I can not read it without my spectacles.

The CHAIRMAN. Can you not see the letter well enough to identify it?

Mr. PARKER. I will lend the witness my glass. We prefer to have this matter looked at through our spectacles. (Laughter.)

The WITNESS. That is Mr. Stubbs's writing.

Q. Is that [the certificate attached to the letter] your writing?

A. Yes, sir.

Q. Please state whether you called on the Rev. Stephen H. Tyng, Jr., on Saturday, the 13th day of July last?

A. I did.

Q. At whose request?

A. At the request of Dr. Stubbs.

Q. Where did you call upon the Rev. Stephen H. Tyng, Jr.?

A. At Mr. Christopher Meyers's residence, across the river, at New-Brunswick.

Q. Where did you find him, and what was he doing?

Mr. TRACY. I think that question had better be divided. It embraces *two* important questions; first, Where did you find him? and next, having found him, What was he doing?

Mr. LOGAN. I accept the suggestion. I will first ask the witness where he found him?

A. I found him in Mr. Meyers's pleasure-ground, or ball-ground.

Q. What was he doing?

Mr. FULLERTON. I do not suppose we can take objection to testimony in this proceeding——

Mr. TRACY. It is not alleged in the presentment that he was doing any thing evil there at the time.

Mr. NASH. Oh! no; we only wish to identify the place.

Mr. TRACY. We do not object to it at all.

The CHAIRMAN. The witness may answer the question.

A. He was playing ball.

Q. (By Mr. FULLERTON.) Was it not *croquet* he was playing with the ladies?

A. I can not say what the game was.

Mr. PARKER. We were not in Mr. Stubbs's parish then. (Laughter.)

Mr. FULLERTON. Neither is it contended that we required a license to play croquet. (Laughter.)

Q. Will you please to state what you did?

A. When I came on the play-ground, I asked Miss Meyers if the Rev. Mr. Tyng was there. She said yes. I told her I had a letter for

him, and handed her the letter. She called the Rev. Mr. Tyng up, and handed him the letter. He turned round and walked a few steps, and I turned round and saw Mr. Tyng reading the letter.

Q. Do you recognize Mr. Tyng now in court?

A. I suppose I would, sir, if I should see him.

Q. Do you recognize him among those gentlemen?

A. (Looking at the respondent and bowing.) That is the gentleman.

Q. Do you know the contents of the letter you handed to Mr. Tyng in the manner you have described?

A. I have a slight recollection of them, but I can not repeat them.

Q. Did you previously compare this [the paper already identified by witness as written by Rev. Dr. Stubbs and himself] with the letter that you handed to the Rev. Mr. Tyng?

A. Yes, sir; Dr. Stubbs read it off to me; Dr. Stubbs read the letter over to me twice, and I thought——

The CHAIRMAN. No matter what you thought, Mr. Howell.

Q. Is that paper a copy of the letter that you gave to the Rev. Mr. Tyng?

Mr. FULLERTON. One moment. The Court will see, I suppose, without objection being made, that the witness is not yet in a condition to answer that question.

Mr. NASH. The witness says that both were read to him.

Mr. FULLERTON. But you will have to produce the other part; that will be necessary to make the proof perfect.

Q. Will you please look at this statement at the end of the second letter and state whether it was true at the time you signed it, November, 1867.

Mr. FULLERTON. I suppose that that letter will become evidence, will be read in evidence at the proper time, when they shall have laid a foundation for it; but for the witness to state whether that certificate is true or not, or for him to state that it is true, is but a repetition of the certificate itself.

The CHAIRMAN. The witness may examine the paper so as to satisfy his own mind as to the contents of it, and then answer the question.

Q. (Repeated.) Was that certificate true at the time you signed it?

A. Yes, sir.

Mr. FULLERTON. The facts which the certificate contains are, I suppose, susceptible of being proved now; and, probably, to a great extent, have been proved by the evidence already given by the witness; and hence there is no necessity for asking him whether the certificate is true or not. Whatever he knew about it then, he can testify to

now; and if he has not already testified to the full extent of his knowledge, it is easy for him to do so.

The CHAIRMAN. The witness has identified the letter, I suppose, as the one which he read.

Mr. FULLERTON. As one which he looked at while Rev. Dr. Stubbs read the letter to him.

Mr. NASH. He has identified it as the one which he read.

Q. Was the letter delivered by you to the Rev. Stephen H. Tyng, Jr., a copy of this letter?

Mr. FULLERTON. If the Court please, the witness has already stated that he held this copy in his hand while the Rev. Mr. Stubbs read the letter that was delivered to Mr. Tyng, and he says that this is the same as the letter that the Rev. Dr. Stubbs read to him; but it will be necessary to superadd the testimony of Rev. Dr. Stubbs himself, who wrote the original, in order to show that the letter delivered to Rev. Mr. Tyng and this are alike. The Court can not fail to perceive this. No man can swear, when he holds a paper in his hand and another one reads what purports to be the original of it, that the papers are alike; he only knows that the one that he holds is like the other *as read;* but whether that other paper is correctly read or not, he can not tell, and that can be proved only by the oath of the other individual.

Mr. NASH. We suppose this is sufficient *prima-facie* evidence of the accuracy of the copy. It is hardly to be supposed that a party reading a paper, of which another party reads a copy at the same time, reads falsely. It is hardly within the capacity of any human mind to undertake to read a paper, and at the same time to dictate a letter which is exactly like the paper which another party holds in his hands. This is certainly *prima-facie* evidence, and if there is any inaccuracy in this paper which we now offer, it can be corrected by the production of the original letter by the other side.

Mr. FULLERTON. I do not desire that any such inference as the one suggested by the counsel should be drawn from the observations which I made. But we are in a court, a court of justice, where we must follow the well-known rules of evidence; and no man is called upon, or ought to be called upon, to swear that another man read a paper correctly, although the presumption may be, as it is in this case, that he did read it correctly. We are not dealing with presumptions, we are dealing with facts; and although it may be technical, yet it is proper for us to ask that the gentleman who read that letter to the witness shall be put upon the stand to testify that he read it correctly. We shall not raise any objection to the reading of the letter when it is properly made out; but it is not taking an unusual course for us to raise the question now, and it is important in

this examination that this letter should be properly proved before it is put in evidence.

Mr. NASH. If the Court please, we insist upon the question.

The CHAIRMAN. The witness can answer according to the best of his belief. I do not think, myself, that he can swear positively.

A. I think it was, sir, as far as I could understand.

The CHAIRMAN. It was read to you as a copy?

A. Yes, sir.

Mr. LOGAN. I now offer the letter in evidence.

Mr. FULLERTON. We claim the right to examine the witness on this point.

Q. Do I understand you to say that Dr. Stubbs read from a paper which he held in his hand whilst you looked over another paper which you held in your hand.

A. No, sir.

Q. How was it?

A. I had no letter in my hand.

Q. Had Dr. Stubbs, then, two papers which he read to you?

A. Yes, sir.

Q. Did you not read either of them?

A. No, sir.

Q. Was there any third person present during the reading of those papers?

A. No, sir.

Q. Then you have no personal knowledge of the contents of those papers, except from first hearing one of them read, and then the other?

A. No, sir.

Q. Then whether the one is a copy of the other is with you a mere matter of memory, supposing them to have been read correctly; is it not?

A. Dr. Stubbs read both of them to me, and asked if they were not both alike.

Q. After hearing a paper of that length read, (I hold up the paper itself for your inspection,) could you determine, after hearing another paper read, purporting to be a copy, that it was an exact copy, word for word?

A. I think so.

Q. Have you read this paper since that time?

A. No, sir.

Q. You have read the certificate attached to it since you have been in court, have you not?

A. Yes, sir.

Q. Let me test your memory, which seems to be a very excellent

one. Will you be kind enough to repeat that certificate you have just read?

A. I can not.

Q. Read it again, please, and then see if you can repeat it?

Mr. NASH. I submit that this is not a proper mode of examination.

The CHAIRMAN. The witness might be very capable of judging whether a document was the same as one which he had just heard read a moment before, without being able to repeat that which he had heard. I do not think the question bears upon the point at issue.

Mr. FULLERTON. It is for the Court to determine.

The CHAIRMAN. The witness labors now under many disadvantages that he did not labor under then.

Mr. FULLERTON. I would be willing to give him a week's time to study it. (Laughter.)

The CHAIRMAN. If the ability of the witness to testify to the identity of these letters depended upon his being able to repeat the letter read to him by Dr. Stubbs, the question you put might, perhaps, be competent; but inasmuch as that is not the case, I do not think it is important.

Mr. FULLERTON. Well, we will proceed. What was done with the letters after Dr. Stubbs read them to you?

A. One he handed to me for the Rev. Mr. Tyng, and the other he kept himself.

Q. How long after he handed you the letter was it you saw Dr. Stubbs again?

A. He handed me the letter on Saturday, and I think I didn't see him again till Sunday morning.

Q. What time on Sunday morning, and where?

A. I think it was at Christ Church. No; I have made a mistake; I did not see him on Sunday; I can not tell when I next saw him.

Q. When did you sign the certificate attached to the letter which you have here perused?

A. I can not say how long, perhaps a week afterward.

Q. Who produced to you the letter with the certificate attached when you signed it?

A. Dr. Stubbs.

Q. Where was that done?

A In the store where I work.

Q. Did you then read over the letter to which the certificate was attached, or was it read to you at that time?

A. It was read to me.

Q. By whom?

A. Dr. Stubbs.

Q. Was the letter itself read at that time, or only the certificate which you signed?

A. It was all read.

Q. Could you then remember that the letter which was itself read to you was precisely the same, word for word, and sentence for sentence, with the one which had been read to you the Saturday previous?

A. It was, as near as I could recollect.

Q. At what hour on Saturday was this letter handed to Rev. Mr. Tyng?

A. I can not distinctly say at what hour, but I think it was about six or seven o'clock, evening.

Q. Before or after sunset?

A. I think it was before.

Q. Are you sure they were playing ball?

A. They were striking the ball with a club or stick of some kind.

Q. Was it the old-fashioned game of ball, or was it something new, Mr. Howell?

A. I could not say.

Q. Did you hear them call it croquet?

A. Not them—I did not hear them call it so.

Q. Have you heard any body else call it croquet?

A. I have.

Q. The same game?

Mr. NASH. We will admit it was croquet. (Laughter.)

Mr. FULLERTON. Oh! I have proved it now. You never should admit a thing after it is proved. (Laughter.)

The CHAIRMAN. What is the object of all this, Mr. Fullerton?

Mr. FULLERTON. I really do not know what object they had on the other side in showing that Mr. Tyng was playing ball. My object now is to show that he was playing croquet.

The CHAIRMAN. Yes, but you say you have proved that.

Mr. FULLERTON. Then permit me to express my surprise that you should ask my object in putting this question. I now ask the witness if ladies did not participate in that game?

The CHAIRMAN. And I am surprised that you should ask that question.

Mr. FULLERTON. Well, sir, I am surprised at your surprise; but I want to show that the game was entirely innocent.

The CHAIRMAN. I do not know that the question of its innocence has been raised here.

Mr. FULLERTON. I do not know then, what the object was in putting it in the case at all.

The CHAIRMAN. It was stated, when that evidence was put in, that the object was merely to identify the time and place.

Mr. FULLERTON. It was not necessary to prove what he was doing in order to identify the time, the place, or the man.

The CHAIRMAN. That was stated to be the object, whether it was necessary or not.

Mr. FULLERTON. Well, if it is proper for them to prove what he was doing, it is proper for me to prove the society in which he was doing it. I now ask the witness, Did ladies participate in the game?

A. I can not state whether they played or not.

Q. How did it happen that you did not see Dr. Stubbs on the Sunday following the delivery of this letter?

A. I could not say.

Q. Was he not absent from New-Brunswick on that day?

A. I don't recollect.

Q. Did not some other clergyman officiate in his place—in his church on that day?

A. I don't recollect that, either.

Q. Can you recollect whether any body else ever did occupy his pulpit besides himself, at any time?

A. Yes, sir.

Q. Please name who?

A. Rev. Mr. Boggs and Rev. Mr. Franklin.

Q. Any one else?

A. Rev. Mr. Baker.

Q. Was the church of Dr. Stubbs open the day following the delivery of this letter?

A. Yes, sir.

Q. And did not one of the reverend gentlemen you have named officiate that day?

A. I don't remember who it was.

Q. Was it a stranger?

A. I don't remember.

Q. Was there a service in that church on the evening of that Sabbath, as well as in the morning?

A. In the afternoon there was service.

The CHAIRMAN. The witness has not answered your question. You asked about the evening, and he answered about the afternoon.

Mr. FULLERTON. I do not draw any distinction in this case between the afternoon and evening.

The CHAIRMAN. Then his answer applies?

Mr. FULLERTON. Yes, sir, I took the answer.

Q. Do you remember who officiated in the afternoon?

A. No, sir.

Q. Who occupies the rectory of Christ Church?

A. I do not know his name, sir; he is a member of Christ Church.

Q. Can you not recollect the name?

A. No, sir.

Q. How long has he occupied it?

A. Not quite a year, I think.

Q. Do you not recollect that this letter was read to you by Dr. Stubbs when he was on the way to the cars to go to Princeton?

A. This letter was read to me in the store where I work; I don't know where he was going then.

Q. Had he any thing with him that indicated he was going to leave New-Brunswick?

A. I think not.

Q. Were those letters read to you in the store?

A. One was read in the store, and the other in the school-room.

Q. You misunderstand me in some way; where were you when the two letters were read to you by Dr. Stubbs—first one and then the other?

A. In the school-room.

Q. Well, I referred to that occasion when I asked you whether he had not something with him, his satchel or something of that kind, indicating that he was to leave town?

A. No, sir, he had not.

Q. Do you know where the letter was dated that was read to you?

A. No, sir.

Q. Do you recollect that it purported to have been written at Princeton?

A. I could not say.

Q. When Dr. Stubbs read it to you, did he read these words, "Princeton, July 12th, 1867"?

A. Not that I recollect of.

Q. If he had read those words, "Princeton, July 12th, 1867," would you not have remembered it?

A. I suppose I would.

Q. Did Dr. Stubbs come directly to you, or did he send a messenger to you on the Saturday when these letters were read to you in the school-room, first one and then the other?

A. I accidentally met him in the school-room.

Q. At what time did you thus meet him?

A. I could not say the hour; in the forenoon, I think.

Q. Then why didn't you serve the letter upon him before six or seven o'clock in the evening?

A. I was informed that Mr. Tyng was to come on the afternoon train.

Q. And were you told where you would find him?

A. I was told that I might find him either at Mr. Meyers's or at Mr. Bishop's.

Mr. FULLERTON. May it please the Court, I have gone a little beyond the rule in this examination; but the question now recurs on the admission of this letter, and we claimed that it can not be received as written evidence, because it is dated at Princeton, July 12th, 1867, and that part of it was not read to the witness, or if it was, he does not remember it, and he says that, if it had been read to him, he would have remembered.

Mr. NASH. Then we call upon the respondent to produce the letter delivered to him by the witness. What answer do you make, gentlemen?

Mr. FULLERTON. No response, except that you must make out your own case.

Mr. NASH. Then you decline to produce it?

Mr. FULLERTON. No; we make no response.

Mr. NASH. We now offer this letter as being good presumptive evidence that the letter delivered to the respondent corresponds substantially with this one. We now offer this letter to the Court for inspection. Is there any objection?

Mr. FULLERTON. No, not at all.

Mr. NASH. The Court will see, with reference to this matter, that perhaps the presentors are going further than it is necessary for them to go, in making any proof whatever of the protest on the part of any of the clergy of New-Brunswick against these services; but in order to avoid any question, we have chosen to give such evidence as we have given on the subject. We suppose that properly the evidence of *consent* to these services should come from the other side. But these facts are now before the Court, that a notice signed by Dr. Stubbs was delivered by the sexton of Christ Church to the respondent upon that Saturday evening, which notice the respondent received and read; that a copy or duplicate was kept as evidence of the contents of that notice; that both documents were read to the sexton before he took the one he delivered to the respondent, and that the one that was kept was afterward read to him, and that he affixed a certificate as to the time and place of the delivery of the other copy. Now, we suppose that that is sufficient evidence to satisfy any court that the two copies are substantially identical; and therefore I am surprised my learned friend on the other side should consider it necessary, upon this very trivial point in the case, to occupy so much time. We offer this as evidence, that the service

which we are now about to show was held, was objected to before it was held; and if there is any thing in the form or language of the notice given to the respondent which it is important for the defense to make out, they can produce the original paper. I therefore ask the Court to receive this as evidence, for the purpose for which we offer it.

Mr. TRACY. May it please the Court, the right to prove that such a letter as it is claimed on the other side was sent to Mr. Tyng, will not be challenged on our part. No objection to that will be made. But the attempt in this case is to put a thing in without its being proved, in violation even of those elementary rules which control evidence in such cases, and which are perfectly familiar among men generally, as well as in courts. The person who is called to prove that one paper is a copy of another should have had his eye on both papers, (with such spectacles as should enable him to see them,) [laughter,] and should be able to speak knowingly. A witness in that position speaks from past actual knowledge of the fact that the two papers were alike, and there is nothing left to invalidate his testimony but defects of memory. But when one paper is compared with another, both being read by the same person—not the person called to prove their identity; and when the party to whom they are read delivers one of them to a stranger (as he did in this case to Mr. Tyng) and returns the other immediately to the original possessor, in whose hands it remains for several days, the party who is called as a witness not having upon it, in the mean time, any private mark by which to identify it, it would not be tolerated in any court in the world that such a witness, with only such means of knowledge, should be permitted or should be thought sufficient to identify the copy of the original paper; not tolerated for this reason, that always in such a case, where, as in this case, no death has intervened, there is a man living who can tell just how it was. In this case Dr. Stubbs, writing a letter at Princeton, going down to New-Brunswick, finding his sexton there, reading the letter to him and giving him a copy to deliver, is a living man, and the right man, because he has the knowledge to tell whether these papers are identical or not. The sexton knows nothing about the contents of the paper except from hearing them both read, and, according to his present recollection, a part of the letter—the word "Princeton" and the date—was not read to him at all. Any man who looks at that letter must in a moment be struck with the remarkable fact, that this gentleman appears in New-Brunswick with a letter written by himself and dated at Princeton. He says, "I have heard so and so this morning;" and so he writes a letter and becomes his own mail-carrier—a circumstance having nothing of evil about it, but a peculiar circumstance, and one

likely to be noticed and remembered. I think if any gentleman this morning was to call in and show a letter written by himself to another gentleman in New-York, the letter being dated "Boston," the person to whom he showed it would naturally say, "How came you from Boston this morning?" or, "Why not have sent the letter by mail?" I speak of this merely in illustration of how dangerous it is as a general rule to depart from the direct line of proving a thing. If Dr. Stubbs wrote two letters, and gave one to his sexton and kept the other, and if the letters were copies of each other, Dr. Stubbs is the man who knows it. Now, why are we called upon to have a thing established by conjecture? We do not question the integrity of this witness. We have not asked to have the oath administered to him. He speaks fairly enough, no doubt, but he does not know any thing about this. Dr. Stubbs is the man who knows, and the sexton is the man who does not know. The gentleman says that he thinks his case would be good without proof of this letter. Now, that is not a matter of the least moment. He is seeking to put it in; and, however immaterial to his case it may be, when he seeks to put it into the case, the question is, Has he proved this letter which is here in court to be a copy of the one delivered to Mr. Tyng? Clearly, as matter of law, he has not; upon the principle I have stated, that instead of resting upon the doubts and uncertainties of a man who did not read the original documents, and who signed this certificate four or five days or a week after the original was read to him, they are required to take the man who wrote the documents and compared them, and who knows whether they are the same or not; and if they are not willing to produce that witness, I submit that the Court ought not to permit this piece of evidence to come in. It is not a question to be determined now whether this is material in the case or not. They are seeking to put it in. They must think it material or else they would not offer it; and if it is not material, then it should be excluded on that ground. But, as I have said, that question is not now before the Court. Things that are of little importance are not to be proved by little or wrong evidence, any more than things of great importance. The evidence must cover the point that it is offered to sustain. If a thing is to be proved, it must be proved; and it can not be proved by guessing at it, merely because it is a small matter. It seems to me there is no room for doubt in regard to this under the law of evidence—which, I may be allowed to say, has generally been spoken of as the most scientific part of the common law, being more in harmony with the principles of philosophy and logic than the other parts of the law irregularly affected by statutory appointments and ancient usages. The law of evidence rests upon the philosophical ground that, when a thing is

to be proved, it is to be proved by the best evidence, and not in some outside, conjectural way. If we can accept the vague recollections and conjectures of the sexton as proof upon this point, where are we to stop? You may find a man a little further off who knows a little less upon the subject, and so the case will rest at last upon vague impressions instead of proofs. It is *evidence* that is to be produced, and not the vague impressions and conjectures of a mind acting upon this subject without knowledge.

Mr. PARKER. I wish to add one observation only. The learned gentleman who conducts the prosecution dropped the thought that, because he asked us to produce a letter which was in our hands, and we did not do it, there was a presumption generated that this was a correct copy of that letter. With very great respect, I submit that my learned adversary is not in the habit of addressing just such an observation as that to a court of law, because it is well known in the profession that he has no right whatever to put a copy in evidence unless he first gives notice to us to produce the original. That is the first ground—the foundation-stone; and I apprehend there was no notice here. Then the question comes up distinctly, and by itself, Is the proof here offered, evidence—not presumption, not guess, not the opinion of Mr. Howell, the thinking of Mr. Howell, the belief of Mr. Howell—but evidence? The Court will observe how very easy it is to prove the very thing itself, not only in this case, but in all cases, and the rule of evidence is strict, therefore, because the proof can be easily filled out to absolute certainty. All that was necessary in this case was for Dr. Stubbs and Mr. Howell together to have compared those papers, and for Mr. Howell to have then put his private mark upon the actual paper that he left in Dr. Stubbs's possession. If that had been done, there would be no difficulty about it. They had it in their power, therefore, to make the identification of this paper clear and satisfactory. And will my learned friend insist, then, in a case like this, he has a right to say that any thing less will do than if it were a common case?

Mr. FULLERTON. The Court will understand, too, that Dr. Stubbs is in court, so that they can call him if they wish. They can produce the evidence in a moment, if they desire to do it.

Mr. NASH. The Court will understand, also, that the respondent, to whom the letter was written, is in court, and that they can produce the other evidence of this fact, if they desire to do so.

Mr. FULLERTON. Call him, then. There is no propriety in permitting Mr. Howell to *guess*, when Dr. Stubbs can *swear*.

The CHAIRMAN. We will reserve this question for the present.

JOHN W. MEYER called, examined by Mr. LOGAN.

Q. What is your name, and where do you reside?

A. My name is John W. Meyer, and I reside in New-Brunswick, New-Jersey.

Q. Were you present in St. James's Methodist church, in New-Brunswick, on the morning of Sunday, the 14th of July last, during the service?

A. Yes, sir.

Q. Can you state at what hour the service commenced?

A. Half after ten in the morning, I think, or somewhere about there.

Q. About how long did the service last?

A. Until twelve, I think.

Q. Who was present and conducting the services that then took place?

A. Mr. Tyng and Dr. Tiffany.

Q. Rev. Stephen H. Tyng, Jr., was present?

A. Yes, sir.

Q. Who was Dr. Tiffany—was he the minister in charge of that church?

A. I do not think he was at that time. He is now.

Q. Where did the Rev. Mr. Tyng and the Rev. Dr. Tiffany officiate in that church—what part of it; where were they standing during the service?

A. They call it a pulpit or platform.

Q. They were on that together, were they not?

A. They were.

Q. Please state, in your own language, what Mr. Tyng did and said during that service. State fully, as far as you can, what part he took, and what he said and did—how he officiated?

A. I think he conducted all of the service as it is done in the church there, with the exception of the reading of a Psalter something similar to the Episcopal Church. He also used a number of the Episcopal prayers, such as are used in the Common Prayer-Book.

Q. You say, "As it is done in that church." You mean by that the Episcopal Church?

A. No, sir; St. James's Methodist church.

Q. Was there, in the course of that service, an absolution pronounced by Mr. Tyng?

A. I do not remember.

Q. Were there any psalms or hymns given out for singing by Mr. Tyng during that service?

A. Yes, sir; I remember one.

Q. (By the CHAIRMAN.) Are you familiar with the Book of Common Prayer?

A. Yes, sir.

Q. What hymn was it that he gave out? Was it from the Book of Common Prayer or from the Methodist Hymn-Book?

A. It is in the Methodist Hymn-Book, but it may be among the Episcopal hymns.

Q. (By the CHAIRMAN.) When he gave it out, did he give it out from the Methodist Hymn-Book or from the Book of Common Prayer?

A. From the Methodist Hymn-Book.

Q. Do you remember the words of the hymn or any thing of it?

A. I remember some of the words.

Q. You do not know its number in the book?

A. No, sir.

Q. What else did Mr. Tyng then do in that service?

Mr. FULLERTON. Do you propose to put the words of the hymn in evidence?

Mr. LOGAN. No; we simply want to ascertain what else he did on that occasion.

Mr. FULLERTON. Then you do not claim that the words of the hymn were not evangelical? (Laughter.)

Mr. LOGAN. Oh! no. We only want to see what else he did.

A. He read some prayers from the Episcopal Common Prayer-Book and he preached a sermon.

Q. If you please, we will now leave the morning service of that day, and go to the evening. Were you present in that church in the evening?

A. Yes, sir.

Q. What hour did the services commence?

A. From seven and a half to a quarter to eight, or possibly eight o'clock.

Q. Who was present at that time and conducting the services?

A. Rev. Mr. Tyng and Mr. Steele.

Q. Who was Mr. Steele?

A. Pastor of the First Reformed Dutch church of New-Brunswick.

Q. Any one else?

A. Rev. Mr. Baty, I think.

Q. Of what church was he pastor?

A. Pastor of the First Presbyterian church.

Q. Any one else?

A. No, sir.

Q. Did they all together occupy this same pulpit and platform?

A. Yes, sir.

Q. Please state what part, if any, Mr. Tyng took in the services that evening?

A. He read the prayers from the Book of Common Prayer, some of them, and preached a sermon. That is all I remember.

Q. Did any of these other ministers that you name as present on that occasion take any, and if so, what part in the services that evening?

A. I think one of them read the Psalter?

Q. What Psalter do you mean?

A. From the book used in St. James's Methodist church.

Q. Did any of the others take any part?

A. I think the other read a hymn.

Q. Do you remember what hymn?

A. No, sir.

Q. You say that Mr. Tyng then preached?

A. Yes, sir.

Q. At either of these times that you speak of, when Mr. Tyng officiated at that church, was he in a gown or surplice?

A. He wore no gown.

Q. Had he any surplice?

A. He wore a full suit of black, I think; I could not say exactly.

Q. He had no outer garment over it?

A. No, sir.

Q. To return to the morning service—did Dr. Tiffany take any part in that service along with Mr. Tyng, and if so, what?

A. Yes, sir, I think he read the Psalter.

Q. The sermons that Rev. Mr. Tyng preached on those two occasions, were they of the usual length?

A. I do not remember that.

Mr. FULLERTON. Is that put in in mitigation or aggravation of the offense?

Mr. NASH. Just as you choose.

CROSS-EXAMINATION BY MR. FULLERTON.

Q. To what church are you attached, or where do you attend church generally?

A. Well, I have attended St. James's Methodist Episcopal church for nearly a year.

Q. You attended that church then, in July last?

A. Yes, sir.

Q. You had no objection, I suppose, to Mr. Tyng's preaching there on the occasion you have referred to?

A. No, sir; I had nothing to do with it anyhow.

The CHAIRMAN. (To the Clerk of the Court.) What have you written there?

The CLERK. (Reading.) "You had no objection to Mr. Tyng's preaching there?"

The CHAIRMAN. Scratch that out; that is of no consequence.

Mr. FULLERTON. I would like to ask the Court whether that is the first thing they have discovered that is of no consequence in this case?

The CHAIRMAN. No, sir, it is not.

Mr. FULLERTON. Then permit me to ask another question. Why your honor did not commence this system of expurgation on the first discovery, and why it was left until *I* asked a question which seemed to be of no consequence?

The CHAIRMAN. It is well to begin now, perhaps. Go on, sir.

Mr. FULLERTON. I repeat the question: Had you any objection to Mr. Tyng's preaching on that day in that church?

The CHAIRMAN. Whether the witness had any objection or not, has not any thing to do with the case.

Mr. FULLERTON. I do not know that it has any thing to do with the case, whether any other clergyman was present at that service besides Mr. Tyng. I do not know that it has any thing to do with the case, whether he pronounced absolution or not.

The CHAIRMAN. It is for the Court, I presume, to judge what questions are relevant to the case. The objections of the witness on that occasion, if he had any, are of no consequence.

Mr. FULLERTON. Allow me to ask whether it is of any consequence to ascertain whether Mr. Tyng wore a gown or a surplice on that occasion?

The CHAIRMAN. It may be, in the view of the Court.

Mr. FULLERTON. Well, it is not a part of the charge, and it is no violation of a canon.

The CHAIRMAN. Oh! very well, sir; if you wish to argue the matter——

Mr. FULLERTON. No, I have no wish to argue it; I merely make the suggestion. I now ask the witness another question.

Q. Were the congregations assembled on that day, in that church, of a highly respectable character?

The CHAIRMAN. I rule out that question.

Q. Did you observe any thing in the character and conduct of any person present on that occasion that was indecorous or out of place for the Sabbath?

A. No, sir.

Q. Was the preaching edifying?

Mr. NASH. I submit that that is a matter of opinion.

The CHAIRMAN. Of course; and so was the matter of the former question.

Mr. NASH. I have no disposition to make technical objections, but the counsel seems desirous of forcing me to it.

Mr. FULLERTON. Well, if any great wrong was perpetrated at that time, in New-Brunswick, I would like to know it; and if, on the other hand, every thing was decorous and proper, I should like to know *that* also.

Mr. NASH. We object to this question as irrelevant.

The CHAIRMAN. The Court considers it irrelevant.

Mr. PARKER. I do not see that the *Court* does.

The CHAIRMAN. Yes, sir, it is irrelevant.

Mr. PARKER. I do not see that the Court considers it irrelevant; I see that the *Chairman* does.

The CHAIRMAN. Do you wish us all to speak at once?

Mr. PARKER. No, sir; but I have never before been in a court where there were five judges, and where one undertook to pronounce the opinions of the Court without consulting the rest.

The CHAIRMAN. I suppose, sir, that the members of the Court are perfectly competent to conduct their proceedings in their own way.

Mr. PARKER. Undoubtedly, sir.

The CHAIRMAN. And if it so be, that they have made me their mouthpiece——

Mr. PARKER. But have they? We do not know that.

The CHAIRMAN. You have known it hitherto. That is what you complain of.

Mr. PARKER. No, sir. Our complaint is, that the Chairman undertakes to pronounce the opinions of the Court without consulting the other members.

The CHAIRMAN. My brethren will object if there is any objection to my course, and I will submit to their decision. I submit that we understand how we are proceeding here.

Mr. PARKER. And I submit, sir, that we understand what the proprieties of a court of justice are.

The CHAIRMAN. Well, if it satisfies you, I will say that my brethren all agree with me in this.

Mr. FULLERTON. Well, I won't ask how the presiding officer of the Court ascertained the fact of that agreement, because that might be out of place, and embarrassing. Shall I proceed to ask another question?

The CHAIRMAN. Of course, sir. I suppose, however, that you ask these questions with the understanding that the Court are capable of deciding as to their propriety. I believe that is the rule in all courts; and I do not understand that it is a matter of any consequence to the members of the bar here present how the judgment of this Court is obtained.

Mr. FULLERTON. No, sir; but if there is any secret way of ascertaining the opinions of men without consulting them, I would like to learn it before I grow any older; because it would be very convenient sometimes.

The CHAIRMAN. Any objections to my rulings in the case, coming from my brethren, will be duly considered; and that is sufficient, I take it, for the purposes of these proceedings.

Q. Will you tell me what Presbyterian clergyman was present on the Sabbath you have named?

A. I have told you that I thought it was Mr. Baty,

Q. Has he a congregation in New-Brunswick?

A. He had then; he has not now.

Q. Name again, if you please, the clergyman of the Dutch Church who was present.

A. Dr. Steele, I think, if there was any.

Q. Had he a congregation, at that time, in New-Brunswick?

A. Yes, sir.

Q. State whether, upon the two occasions you have mentioned, the audiences were large or small?

A. They were large.

Q. Composed in part of the three congregations, were they not?

A. Well, I don't know; quite likely; the congregation was very large in the evening.

Q. Did Mr. Tyng read the lessons of the day?

A. I don't remember; I think he read some of them; it was either he or Dr. Tiffany; I don't remember which, but I think it was Mr. Tyng.

Q. Dr. Tiffany—of what persuasion is he?

A. He is now pastor of the St. James's Methodist church.

Q. You have spoken of the Psalter of the Methodist Church; has that Church a Psalter?

A. Yes, sir.

Q. Used in that Church?

A. Yes, sir.

Q. Composed of the Psalms of David?

A. The Psalms of David, the Ten Commandments, the Apostles' Creed, the Lord's Prayer, and the Communion Service, and *Gloria in Excelsis*.

Q. State whether you are *the* Mr. Meyer at whose house Mr. Tyng was served with the letter?

A. No, sir.

Q. Are you in any way connected with him?

A. No, sir.

Q. Was Dr. Tiffany pastor of that Methodist church at that time?

A. I think not.

Q. Was there any pastor of that church at that time?

A. I think not; I don't know. Bishop McClintock, of the Methodist Church, preached there most of the time.

Q. (By Mr. TRACY.) Are you able now to recollect any part of the hymn which you have stated in your testimony that Mr. Tyng gave out on that occasion?

A. Yes, sir; it is the hymn that commences—

"Hasten, sinner, to be wise,
Stay not for the morrow's sun."

I think it is the 333d hymn of the Methodist Hymn-Book.

Q. (By Mr. NASH.) You were a member of the choir on those two occasions, were you not?

A. Yes, sir.

Q. (By Mr. TRACY.) As you were in the choir, will you state what canticles were sung that day — whether they were the same that are used in the services of the Episcopal Church — the canticles that were chanted?

A. I think that in the morning we sang the *Jubilate* — "Oh! be joyful in the Lord!" and the "*Gloria Patri*;" and in the evening we sang the "*Gloria Patri*," and, I think, an anthem, "Praise the Lord, O my soul!" or it might have been in the reverse order; I won't be certain which was in the morning or which was in the evening.

J. FLEMING VAN RENSELLAER called, examined by Mr. LOGAN, testified.

Q. What is your name, and where do you reside?

A. My name is J. Fleming Van Rensellaer; I reside in New-Brunswick.

Q. Were you present on the morning of Sunday, July the 14th of last year, at St. James's Methodist Episcopal church in New-Brunswick?

A. I was, sir.

Q. What part of the church did you occupy during the service?

A. I occupied the front seat next to the railing, at the end of the church.

Q. The railing next to what?

A. The railing around the pulpit, or whatever they call it. I don't know what they do call it in the Methodist Church.

Q. Whom did you see upon the pulpit, or platform, conducting the service?

A. I saw Rev. Mr. Tyng.

Q. Do you recognize him here now?

A. I do, sir.

Q. Rev. Stephen H. Tyng, Jr.?

A. Rev. Mr. Tyng, and Mr. Tiffany.

Q. Who was Mr. Tiffany that you speak of?

A. I did not know at the time who he was, but I inquired and found out that he was Rev. Mr. Tiffany. I didn't know him then and had never seen him before to my knowledge.

Q. What is he now—is he a minister?

A. I believe he is the pastor of St. James's Methodist church in New-Brunswick.

Q. Were you a regular attendant at that church?

A. No, sir.

Q. What church did you attend?

A. Christ Church, Episcopal.

Q. How came you to be present upon that occasion at St. James's Methodist church?

A. From curiosity to hear Mr. Tyng.

Q. If you had curiosity, you must have had knowledge? How did you arrive at your knowledge that Mr. Tyng was to officiate or preach there?

The CHAIRMAN. What is the use of that question?

Mr. LOGAN. To show that an announcement of it had been made in public prints, and that the attention of the witness was called to it by that means.

A. I saw a notice of it under the heading, "*Church Notices*," in the New-Brunswick paper, that he was to preach there.

Q. The service that took place there on that occasion, was it conducted in whole or in part by Mr. Tyng?. Please state what part Mr. Tyng took in it, and what part Mr. Tiffany took?

A. I think Mr. Tyng took the most part; I do not remember what part Mr. Tiffany took—some portions of the service I think, I remember he took part in.

Q. Please state in brief what part Mr. Tyng took in that service —what did he do?

A. I think he read some prayers from the Episcopal Prayer Book; I think that the *Absolution* was read as a prayer; and if I remember right, I think the Lord's Prayer was combined with it. The two *lessons* of the Episcopal Church—(I think)—the two lessons for that day were read together, one after another, and the hymn, and a sermon preached by Mr. Tyng.

Q. What musical service, if any, was there during that celebration?

A. I remember nothing but a hymn.

Q. At this service how was Mr. Tyng dressed?

A. In a frock-coat, I think.

Q. Had he any gown or surplice on?

A. No, sir.

Q. Do you remember if Mr. Tiffany gave out any psalm or hymn at that service?

A. I do not.

Q. You were not present at the evening service?

A. I was not.

CROSS-EXAMINED BY MR. FULLERTON.

Q. Did you attend St. James's church at that day at the request of any one?

A. No, sir.

Q. Was it at no one's suggestion that you went there?

A. No, sir.

Q. Before going there had you heard that any objection had been made by any one to Mr. Tyng's preaching there?

A. I had not.

Q. Had you heard the subject discussed?

A. Not at all.

Q. Where did you see this notice that you speak of?

A. I think I saw that in the New-Brunswick daily paper; those notices are generally published Saturdays, I believe.

Q. And it was mere curiosity that took you there—nothing else?

A. Nothing else, sir.

Q. Will you explain how the *Absolution* was said as a prayer?

A. I think it was just repeated or read from a Prayer-Book. If I remember right, there was a Prayer-Book from the Episcopal Church used—portions of it used by Mr. Tyng, from which he read some prayers, and I think that this was read——

Q. Don't go off the subject; how was *Absolution* said as a prayer?

A. I could hardly tell you. Of course I don't know it myself unless I read it over; but I know it was merely repeated as a prayer, and the Lord's Prayer added to it, if I recollect right.

Q. Do you know whether or not the Prayer-Book contains more than one form of *Absolution?*

A. It does.

Q. How many?

A. Two.

Q. Which one did he use on that day?

A. I can not say.

Q. Did he repeat on that day the form of *Absolution* as contained in the Prayer-Book, or did he alter it?

A. I can not say.

Q. Did he add any thing to it?

A. I think there was, previous to that, quite a prayer, and that that was brought in last.

Q. Just before that there was quite a prayer, you say?

A. I think there was. There were several prayers together, and I do not remember now how many there were, or in what order they came.

Q. The curiosity which led you there that day did not lead you, then, to remember the order of exercises very particularly?

A. No, it did not.

Q. Can you say that any thing preceded *Absolution* save the *General Confession?*

A. I can not say so; I won't say positively one way or the other.

Q. And you really think the Lord's Prayer was continued right after the Absolution, do you?

A. I think it was; I know it was after something, and I think it was after that.

Q. How have you been accustomed to hear it in the morning service?

A. Not in connection with any other prayer.

Q. Nor in connection with the Absolution?

A. No, sir; not added to it as if it were our prayer.

Q. When you say that the Lord's Prayer followed the Absolution and was added to it, do you mean any thing more than that it was repeated right after Absolution?

A. Most of the prayers in the Episcopal Church——

Q. Just answer my question.

A. It came very quickly after it. (Laughter.)

Q. How is it in the Prayer-Book that you have been accustomed to use—does the Lord's Prayer follow immediately after Absolution, or does something else come in between them?

A. I think it follows immediately after the prayer.

Q. After Absolution?

A. I think so; I can not tell positively without seeing the book, but it does not come in the way he read it. It follows in the Episcopal Church, I think, in a different way from the way in which Mr. Tyng read it; it does not follow as if it were one prayer.

Q. I understand that you attend Christ Church?

A. I do.

Q. Is your father an officer of that church?

A. He is not.

Q. Has he ever been?

A. He was at one time.

Q. You are familiar with the Prayer-Book?

A. I am.

Q. You own one?

A. I do.

Q. Will you now be kind enough to state the difference between the relative position of the General Confession and Absolution and the Lord's Prayer in your Prayer-Book, and the forms used by Mr. Tyng on the occasion referred to?

A. I believe the General Confession comes first, Absolution next, and the Lord's Prayer following, and they are separate and distinct, each one. Mr. Tyng (if he used the Absolution and Confession, which I won't say) combined all three together; if he did not use all three, he combined the Lord's Prayer with some other without making them separate and distinct, as they are in the Episcopal Church.

Q. Well, he did not repeat them both together, I take it?

A. No, he could not very well.

Q. He repeated them one after the other?

A. Yes, sir, he did; that is, if he did repeat the two, but I am not positive about that; but he repeated the Lord's Prayer immediately afterward—he kept right along, without terminating the other prayer, as it is in our book.

Q. How did he alter it?

A. I think it ends in our Prayer-Book, "Lord Jesus Christ," or something like that; and, instead of using those words, he went right on with, "Our Father."

Q. You are sure of that?

A. As sure as I can be; I think I noticed it at the time; I could not swear to it, but I think it was so.

Q. Is that all you have to state in answer to the last question—"How did he alter it?"

A. I don't say that he blended all three together, because I won't be positive about his using both Confession and Absolution.

Q. Will you say that he pronounced Absolution?

A. I will not say positively.

Q. Will you say absolutely that he repeated the Confession?

A. I will not, in regard to the Confession.

Q. Will you say that he repeated the Lord's Prayer?

A. I will.

Q. Did the congregation or any part of them repeat it at the same time?

A. They appeared to in the portion of the church that I was in; I can not tell whether they all did or not.

Q. Was the Psalter read there that day?

A. There was a Psalter read.

Q. What Psalter?

A. I do not know; I had not any Prayer-Book with me.

Q. Were there responses from the congregation when the Psalter was read?

A. I do not remember; I think so.

Q. Did not the congregation and the clergymen alternate?

A. I think they did.

Q. Can you say whether it was the Psalter of the Episcopal Church?

A. I can not; I had no book with me.

By Rev. Dr. HOFFMAN. When Mr. Tyng was reading the Lord's Prayer and the prayers attached to it, was he standing or kneeling?

A. Kneeling, sir.

BY MR. FULLERTON.

Q. Who preached for Dr. Stubbs on that day?

A. I do not know.

Q. Who officiated there?

A. I do not know; I was not in the church at all.

Q. Did any one?

A. I do not know.

Q. Do you know whether the church was open that day?

A. I do not.

Q. Was there service in the afternoon or evening at Dr. Stubbs's church at that time—what was the custom?

A. In the afternoon was the custom.

Q. Was there any service there that day?

A. I can not say; I did not attend church that day.

Q. Your curiosity did not lead you there?

A. I go there from *duty;* I went to the *other* church from curiosity.

JEREMIAH VAN RENSELLAER called; examined by Mr. LOGAN.

Q. What is your name and residence?

A. Name, Jeremiah Van Rensellaer; residence, New-Brunswick, New-Jersey.

Q. The last witness was your son?

A. Yes, sir.

Q. Were you present at this service that has been spoken of here by your son?

A. I was, sir.

Q. How came you to be present—what induced you to go there?

A. I saw the announcement in the papers, or rather in the New-

Brunswick paper, and, if my recollection serves me, also by placard, that Rev. Mr. Stephen H. Tyng would preach or officiate at the Methodist church, and I went for the purpose of hearing him, expecting the Episcopal service to be performed.

Q. You are an attendant in Dr. Stubbs's church?

A. I am, sir.

Q. The Rev. Mr. Tyng was there, of course?

A. Yes, sir.

Q. Will you please state, Mr. Van Rensellaer, if you can, the manner in which Mr. Tyng officiated?

A. I can not exactly describe it; it is the only time I ever was in the church, and I really don't know exactly the arrangement of the pulpit or chancel, or whether there is a chancel or not.

Q. Was he alone at that time?

A. No, sir; there was another gentleman with him, whom I understood to be Rev. Mr. Tiffany, though I did not know him; never saw him since or before.

Q. Was Mr. Tyng in gown or surplice at that time?

A. In ordinary citizen's dress, I think.

Q. Will you state, if you please, the service or ministration made by Rev. Mr. Tyng on that occasion?

A. If my recollection serves me, two of the initiatory sentences were used as prayers, the service commencing in that way. It is possible there may have been a chant or verse sung, music at the commencement; I am not certain as to that; but after two verses (as I remember) were read as prayers, the General Confession, and the Second Absolution by a change of the personal pronouns, instead of being read as an Absolution, was read as a prayer. That, I think, beyond all doubt, was the manner in which it was used.

Q. Please read as you think it was changed by Mr. Tyng.

A. Instead of reading according to the text, my impression is very distinct that it was read in this form: "Almighty, our heavenly Father, who of thy great mercy hath promised forgiveness of sins to all those who with hearty repentance and true faith turn unto him, have mercy upon *us;* pardon and deliver *us* from all *our* sins; confirm and strengthen *us* in all goodness; and bring *us* to *ever*lasting life, through Jesus Christ our Lord." I think that is the form in which it was used.

Q. What other parts of the service did Mr. Tyng perform? Describe them?

A. Some prayers were read, and a litany.

Q. What prayers, and what litany?

A. I can not really say exactly as to the prayers; but my impression is, prayers from the Prayer-Book, as they are in the morning ser-

vice. A litany was read alternately, I think, by Rev. Mr. Tyng and the congregation, but different from that in our Church Prayer-Book. I think I followed it in a book that was handed me by some gentleman that was in the pew with me, which I believe to have been the book in use in that church.

Q. What musical service, if any, was had?

A. I think there was a chant, sir, and I think one of the chants from the Prayer-Book; also, a hymn and psalm, one of which, either the hymn or the psalm, I found in my Prayer-Book which I had with me; the other I could not find; it was not in my Book of Common Prayer.

Q. Mr. Tyng preached?

A. Yes, sir, he preached.

Q. What length was the sermon; do you recollect?

A. I was not particularly struck with it. (Laughter.) My impression is, that the whole service was a little less than usual. I think we got out of church earlier than I had been in the habit of doing, and probably (that is my impression) before the other congregations.

Q. Are there any other Episcopal churches in the city of New-Brunswick, than Christ Church and St. John the Evangelist's?

A. None but Christ Church and St. John the Evangelist's.

Mr. NASH. The case on the part of the presentors is closed, if that notice that we have offered is received. If the Court would like to hear any further remarks upon the subject, I am willing to make any additional suggestions that may be acceptable. I certainly should not offer this notice unless I believed that our proof would be sufficient, in any court of justice, to enable it to be received.

I can enlarge upon the proposition, if the Court have any doubt or hesitation about it; but of course it is to be presumed, upon all sides, I suppose, that the members of the Court are not familiar with the technical rules of evidence which obtain in the civil courts; and, therefore, whatever may be said upon either side, the Court will take simply upon the authority of the counsel stating it. I might enlarge upon the reasonableness of the rule for which we contend, and show how, in point of fact, not only according to technical rules of evidence, but according to the reason upon which those rules are based, this is competent evidence to prove the facts we desire to establish by it.

I will not enlarge upon this, however, unless the Court would like to hear further remarks upon the subject.

Rev. Dr. TUTTLE. We should like to hear the counsel expound his views on this point.

Mr. NASH. Very well. The primary notice is of course the one that was left with Mr. Tyng. There is a rule of law regarding the

best evidence to be produced; but the best evidence may be of two classes. When primary evidence can be had, then secondary evidence is not admissible. The primary evidence of the contents of a document is the document itself; but in default of that, the secondary evidence is oral proof of the contents of the document. Now, in this case, we have called upon the respondent to give us the original document. He withholds it. That entitles the presentors to give secondary evidence, as it is called, of the contents of that document. Now, there are no distinctions in secondary evidence, as to the admissibility of the evidence. You may prove the contents of a document by the testimony of a person who has read it, and who can give from recollection substantially its contents; or you may prove the contents of it by a copy taken at the time. They are both secondary evidence, and one is no better than the other in point of admissibility, although one may be more satisfactory than the other. And it is not always necessary to call the person that can give the most satisfactory evidence upon the subject, because there may be various reasons why he can not or should not be called; and the rules of evidence are based upon general principles, applicable to all cases that may come up. Under the former rules prevailing in courts of justice, a party to a suit never could be heard as a witness. He might want to prove the service of some notice or paper, and the Court might feel that he perhaps was the person most competent to give satisfactory evidence upon that point, if the original could not be produced; but as the party could not be called as a witness, the Court would take the evidence of another person who did not know the contents of the paper so well, but who knew it well enough to prove what the paper did contain. Now, in this case the only argument against the allowance by the Court of this paper, is not any doubt that it sufficiently states the contents of the original paper served upon Mr. Tyng, but it is sought to compel us to call Dr. Stubbs, who wrote both papers, upon the ground that his evidence would be more satisfactory than that of the sexton. Well, its being more satisfactory does not make it any more admissible. In both cases it is secondary evidence—it is not the paper itself; and therefore Dr. Stubbs, if he should be called and put upon the stand, might be subjected to the same cross-examination as the other witness, as to the accuracy of this paper, as to whether he had compared it carefully with the original, and as to whether he had had the assistance of a third person in making the comparison. His testimony might be more satisfactory than that of Mr. Howell, but it would be testimony of the same grade and kind. But, it may be said, why not call Dr. Stubbs? The reason why we do not call him is simply this, and I have no objection, in reference to my friends on the other side, or in

reference to the Court, to state it. We do not conceive that this case is, as it has been termed, a prosecution on the part of Dr. Stubbs. We suppose that he occupies no other position in the case than any other clergyman. He has no feeling whatever against this respondent, and we do not desire to put him forward in any way in the case as prosecutor, as witness, or as taking any part in the matter beyond the fact that it happened to be his lot to have the duty of putting this canon in force cast upon him. Now, if the Court think that hearing Dr. Stubbs's testimony in reference to the contents of that paper would be any more satisfactory evidence to their minds, that this paper which we offer is a fair and substantial duplicate of the one which was served upon Mr. Tyng, why, of course, we shall be obliged to put him on the stand for that purpose; but, as the Court has already seen, our case is completed without his testimony, and we think it is complete even without the proof of this notice. We prefer, however, to have the notice in, in order that the ground stated in it may be fairly before the Court and before the defendant. I close with what I said before. I consider that the paper is legitimately proved, and is proper to be read in evidence, otherwise I would not offer it to the Court.

Mr. TRACY. May it please the Court—The only reason which is assigned why this question should be determined now, when it has been once reserved to give the Court time for consideration, is, that Dr. Stubbs is one of the witnesses here whom the gentleman wishes to discharge this evening. Now, if the Court please, if this case were to go on, and be tried without the presence of Dr. Stubbs, there could be no result but a prompt dismissal of it. The charge is, of trenching upon the prerogative of Dr. Stubbs; and Dr. Stubbs's assent to what was done is stated in the presentment itself to be a material point; and no matter what he did or said on the Wednesday or Friday previous, the fact of his assent on that Sunday morning or evening is not to be got at except by his testimony. His attendance is therefore indispensable. In illustration of this, I may here say that, in some cases in the civil courts—cases, for instance, involving the ownership of property, such as cases of larceny, etc., the presence in court of the owner of the property is absolutely required, and without it the case can not stand.

Now, if this Court please to discharge this witness to-day, we shall be compelled to subpœna him back here to-morrow, because we can not let this cause terminate in that way without having the man here upon the stand whose presence is necessary to a complete examination and understanding of the case. But it is not our place —it is their place—to call him.

A single word now in reply to the new matter suggested by the

counsel on the other side. My learned friend has said, with entire truth, that there are no degrees in secondary evidence. If you can get a man who has a copy of a paper, and another man who can repeat it from memory, there is no choice between them as witnesses. But there is another rule that is not slaughtered anywhere, but stands always; namely, that, while there are no degrees in secondary evidence, (as to admissibility,) there is a broad distinction between what is evidence and what is not evidence. A man can not come here and say, "I think," "I guess," "I judge so," and have that received as evidence. That is mere impression; it is not evidence at all. The difference between a man who knows and a man who does not know, is certainly not the distinction between primary evidence and secondary evidence; but is the distinction between evidence and error—between evidence and no evidence—between evidence and nothing.

Now, here is a man, Mr. Howell, who never read either of these papers, and who only knows that one paper, and another paper, were read to him by this clergyman. He, therefore, never had any personal knowledge of the contents of either of the papers; so that, instead of his statement upon that subject being secondary evidence, it is really no evidence at all. He has no more right to assume that Dr. Stubbs read it to him correctly than we have a right to assume that the doctor did not read it correctly; because, according to the witness's own statement, he did not hear the words, "Princeton, July 12th," read. All the witness knows is, that Dr. Stubbs read two papers to him; and, so far from having any personal knowledge that they were read correctly, he is not even able to identify the papers, because it appears that he did not put any mark upon either of them by which to identify it again.

However, I will not now push the matter any further, as I may be repeating what has been said already. But I will say, in conclusion, that there never was a balder case in the world than this, never a clearer failure to prove a case, by any sort of evidence, primary or secondary, than the failure here. It is not proved at all, and the Court can not proceed unless they are to proceed upon presumption. I beg to remind this Court that the canons which provide for such a trial as this provide, also, that it is to proceed according to the principles and methods of the common law. Now, if there is any thing in the common law that is respectable, (and there is much in it that I venerate,) if there is any portion of it that deserves to be regarded and cherished with unusual reverence, it is those rules of evidence which protect the rights of the individual in every case, and prevent the great wrongs that would result from allowing men to be sworn into positions and responsibilities upon vague and sha-

dowy suppositions and impressions. These rules of evidence are vital in the administration of justice. While the law generally may be criticised for many things, its rules of evidence alone are sufficient to entitle it to all the eulogy and admiration it has ever received.

The CHAIRMAN. It is the desire of the Court to reserve the question until to-morrow morning. The Court will now adjourn until ten o'clock to-morrow.

THIRD DAY.

TUESDAY, FEB. 11, 1868.

The Court met at ten A.M. The proceedings were opened with prayer.

The CHAIRMAN. The Court announce that they do not receive this paper as evidence as it at present stands.

Rev. ALFRED STUBBS, D.D., called; examined by Mr. NASH.

Q. What is your name and residence?

A. Alfred Stubbs, New-Brunswick.

Q. Did you reside in New-Brunswick in July, 1867?

A. I did.

Q. What was your profession and calling at that time?

A. Clergyman; rector of Christ Church.

Q. How long had you been rector of Christ Church, New-Brunswick?

A. I was instituted in October, 1840, and have remained rector ever since.

Q. Do you remember being in Princeton about the middle of July, 1867?

A. Yes. I was at Princeton on several occasions.

Q. Do you remember delivering a letter to your sexton, Mr. Howell, to hand to the respondent in this case?

A. I do.

Q. Where did you write that letter?

A. In Trinity Church Rectory, Princeton.

Q. Where did you hand it to Mr. Howell?

A. On the same day, in the Sunday-school room of Christ Church, New-Brunswick.

Q. How far is Princeton from New-Brunswick?

A. About fifteen miles.

Q. Railroad communication between them?

A. Yes; very frequent.

Q. Did you prepare one or more copies of that letter?

A. My impression is, that I prepared two copies.

Q. When you delivered the letter to Mr. Howell, did you retain a copy or duplicate of it?

A. I did so.

Q. Look at the letter shown you, and state whether that is one of the copies you so prepared?

A. That is certainly my handwriting. It is one of the copies I prepared.

[Mr. Nash read the letter in evidence, which was marked by the Clerk of the Court with his initials, and was as follows:

REV. STEPHEN H. TYNG, JR.: PRINCETON, July 12.

REVEREND AND DEAR SIR: Information was given me this morning by Rev. Edward Boggs, D.D., whom I met at an ordination service in this neighborhood, that he had seen a notice published in the New-Brunswick papers that you would officiate on Sunday next in New-Brunswick, for a congregation of the Methodist Society.

On consulting the Bishop of the Diocese, he authorized me to say that he would not suffer the law of the Church to be violated with impunity, and I beg you, therefore, to desist from that service, which is plainly forbidden by the twelfth canon.

You will, I trust, readily comply with this request, prompted, as it is, by the earnest desire to preserve the unity and peace of the Church and to promote concord among brethren.

I remain, dear sir, very sincerely yours,

ALFRED E. STUBBS.]

Q. Was Christ Church open for service at the usual hours on Sunday, July 14th, 1867?

A. It was, sir.

Q. What were those hours at that season?

A. Half-past ten in the morning, and half-past four in the afternoon.

Q. Who officiated on that Sunday in your church?

A. The Rev. Alfred B. Baker, rector of Trinity Church, Princeton.

Q. At one or both services?

A. At both services.

Q. Where were you?

A. I was at Princeton, officiating at Trinity Church.

Q. You had exchanged, then, for that day, with Mr. Baker?

A. I had.

Q. What other Episcopal church is there in New-Brunswick besides Christ Church?

A. The Church of St. John the Evangelist.

Q. Is that the only one?

A. The only one.

Q. Who was the minister or rector of that church in July, 1867?

A. The Rev. Edward D. Boggs, D.D.

Q. How long had he been rector of that church?

A. About twelve months—since July 1st, 1866.

Q. St. John the Evangelist's was originally a chapel of Christ Church, was it not?

A. It was.

Q. Under your charge?

A. Under my charge. I might add, in connection with that, established under the provisions of the charter.

Q. Was it what is called a free church?

A. It was, and is.

Q. What do you mean by a free church?

A. No pews are rented; the sittings are all free.

Q. Is it in the thickly settled or in the suburban parts of the city?

A. Not very thickly settled—in that part of the city where there seems most growth.

Q. Has there ever been any partition of parish bounds between these two churches since St. John's was organized as an independent church?

A. There has been no partition or division.

CROSS-EXAMINATION BY MR. FULLERTON.

Q. Are you familiar with the canons of the Church?

A. I trust so.

Q. I call your attention to subdivision 3, of section 5, of canon 12, title 1st, found on page 30 of the General Convention of the Protestant Episcopal Church, and to that part of it which requires that "Every minister of this Church shall make out and continue, as far as practicable, a list of all families and adult persons within his cure, to remain for the use of his successor, to be continued by him and by every future minister in the same parish," and I ask you whether you ever made out a list in compliance with that canon?

The CHAIRMAN. On page 30, do you say?

Mr. FULLERTON. Yes, sir; the paging is at the bottom, if the Chairman is not familiar with it. (Laughter.)

A. I make out a list of all families and adult persons who attend Christ Church.

Q. Why did you not include in that list those who did not attend Christ Church?

Mr. NASH. I object to that question.

Mr. FULLERTON. Well, an objection without a reason for it does not amount to much.

Mr. NASH. I propose to give my reason. I do not suppose that the attempt to construe these canons by the testimony of witnesses is going to answer any purpose here. The point of the question is quite apparent. It is to show that the term *cure* in section 5 of this canon has a different meaning from the term *cure* in section 6. I think that is true; but I do not think it is a matter to be established by the testimony of witnesses, or by any practices or impressions of particular clergymen. I object to the question as immaterial and irrelevant.

Mr. FULLERTON. The question is neither immaterial nor irrelevant. I did not suppose that Dr. Stubbs had made out and included in this list any families who did not attend his church; but it is well to show what his practice has been in that regard, and it will be well for us to understand the reason for it. It is because he puts the proper construction upon that section of the canon and attaches the proper and legitimate meaning to the word *cure* there used; and the word *cure* in that subdivision has precisely the same meaning as the word *cure* in section 6, with the violation of which Mr. Tyng stands charged here to-day. Now, if the families belonging to St. James's Church in New-Brunswick do not belong to his cure, (and he must certainly consider them as not belonging to it, as he does not include them in his list,) then the Methodist church does not belong to his cure; and, according to——

The CHAIRMAN. After all, the testimony you offer upon that point would be only the opinion of Dr. Stubbs as to the meaning of the word *cure*.

Mr. FULLERTON. No, sir, it is not his opinion: it is his *practice*, his construction of the section.

The CHAIRMAN. Well, his construction of the canon is not authoritative.

Mr. NASH. I have not objected to their asking Dr. Stubbs as to his practice, but my objection is to their inquiring his particular reasons for it.

Mr. FULLERTON. I propose to show the usages of the Church, for which we all have, or ought to have, a great respect; and I can establish them only by showing the usages adopted and followed by individual ministers of the Church.

Those families to whom Mr. Tyng ministered that day have never really been within the cure of Dr. Stubbs, within the proper meaning

of that term; and, therefore, it was no violation of the statute or canon for Mr. Tyng to preach to them that day. That is my position—that it is no violation of any canon of the Episcopal Church to enter a Methodist church and preach the word of life to a flock without a shepherd; and that was the condition of that congregation that day. (Applause and hisses.)

The CHAIRMAN. I must ask those present to remember and observe the proprieties of the occasion. I do hope there will be no demonstrations hereafter, either of approval or disapproval.

Mr. FULLERTON. I most heartily join in that request, sir. Now, I do not propose to show that Dr. Stubbs has fallen short of his duty in any respect. On the contrary, I wish to adopt his construction (which is also the construction of every other minister of the Protestant Episcopal Church) of the canon in question and of the meaning of the word *cure;* because if it be a violation of the canon to go within the territorial limits of another's cure and preach the Gospel, we can not shut our eyes to the conclusion that the minister who violates the 3d subdivision of the 5th section of the 12th canon in the making out of this list for the benefit of his successor is equally guilty, and ought to be subjected to the same punishment.

The CHAIRMAN. That will come in well enough, Mr. Fullerton, in your argument with reference to the canon, but the meaning of the canon can not be shown by the opinion of Dr. Stubbs.

Mr. FULLERTON. I do not propose to show merely the opinion or practice of Dr. Stubbs. I propose to show the usage of the Church.

The CHAIRMAN. You do propose to show it by the practice of Dr. Stubbs.

Mr. FULLERTON. Well, I can not bring the whole Church and put it upon the stand.

The CHAIRMAN. Exactly; and for that reason you can merely show in this way the opinion upon this point or the practice of this one witness.

Mr. NASH. I have not objected to their showing the practice of Dr. Stubbs, or his practical construction of the canon, (if they call it so,) in keeping his parish register; but when they inquire into his private reasons for that practice, we do object. It is for the Court to determine the legitimate construction of the canon.

The WITNESS. In giving my answer as to my practice in making out the list, I should have quoted more of the language of the canon. I make out a list, "as far as practicable, of all families and adult persons" who attend Christ Church.

BY MR. FULLERTON, (CONTINUED.)

Q. Did or do you intend to include in it (the list) any who did not or do not attend Christ Church?

A. Yes, sir; I include many persons within my cure who do not attend Christ Church.

Mr. NASH. That is not the question, Dr. Stubbs.

Mr. PARKER. Never mind; let the answer go down.

Q. Did you intend to include in that list any who did not attend Christ Church?

A. No.

Q. How many Episcopal congregations are there in Princeton, New-Jersey?

A. But one.

Q. Mr. Baker, I believe, is the rector?

A. He is.

Q. Do you know of your own knowledge whether Mr. Baker obtained the permission of Dr. Boggs to preach in Christ Church, New-Brunswick, on the Sabbath when Mr. Tyng preached in St. James's church, of the same place?

A. I knew of my own knowledge that permission was not denied.

Q. (Last question repeated.) I want an answer.

The WITNESS. I ask the Court if that is not a sufficient answer to the question?

The CHAIRMAN. Will the Clerk read the question and the answer?

The Clerk read them as above.

The CHAIRMAN. Answer the question, Dr. Stubbs.

A. I know that he had his tacit permission. (Laughter.)

Q. (Last question repeated again.)

A. In connection with my previous answers, I say I know that he had permission.

Q. Were you present when that permission was given?

A. I scarcely understand the question—or, rather, I would say, I was not present at any verbal permission given, if you allow me to correct it in that way.

Mr. FULLERTON. Undoubtedly. Were you present when any *written* permission was given?

A. No, I was not.

Q. If the permission was neither written nor verbal, how was it given or communicated?

A. I don't know what communication they had with each other. (Laughter.)

Q. Do you know, then, of your own knowledge, that the *express permission* (I quote from the canon) of Dr. Boggs was obtained by Mr. Baker to officiate that day?

A. No.

Q. Did you ever preach in the city of New-York?

Mr. NASH. I object to the question as irrelevant.

Mr. FULLERTON. It is not irrelevant by any means. I propose to show that Dr. Stubbs has preached within the city of New-York, probably on more occasions than one—perhaps a score of times—when he has not obtained the consent of a majority of the ministers within this parish, (because this city is one parish, like the city of New-Brunswick;) and I offer to prove this not for the purpose of showing that he has violated the canon, but for the purpose of showing that he has conformed to what have been the practices and usages of the Episcopal Church time out of mind. That is my object.

Mr. NASH. The whole question is one of the construction of the canon, and I do not see how the usages of the Church, or, rather, the usages of different ministers in it, have any bearing upon it.

Undoubtedly, there is a question under the canon which has been suggested here by the point, whether it is necessary to prove express protest as evidence of the want of express consent—there is the question whether consent is not ordinarily implied in the exchange of pulpits between clergy of the same denomination; but these are questions which the Court will consider and determine, and I do not see how it is necessary to go through Dr. Stubbs's ministerial career for the purpose of getting at the construction of the canon. That is the point of my objection.

In this case the act complained of was not that Mr. Tyng acted upon an implied consent of the rectors of New-Brunswick, hoping or thinking that consent would not be withheld; it is not that he came there upon the invitation of either one of them. The violation complained of is, that he wantonly intruded on their cures, against their express prohibition. Now, if the Court can see in this line of examination any aid in the construction of the canon, I have no objection to the testimony; but it seems to me that it is traveling out of the record for no purpose.

Mr. FULLERTON. I am surprised that my learned and experienced friend should mistake so entirely the nature and scope of the charge preferred against my client. It is not that he intruded himself into that parish; it is not that he did something against the will of either Dr. Stubbs or Dr. Boggs. That is no part of the charge. The charge is within the terms of the canon. The canon defines the offense, and we are not permitted to travel outside of it for the purpose of ascertaining whether any thing was done beyond the offense there charged. The offense is plainly and distinctly charged, and there is no mistaking it. "No minister belonging to this Church

shall officiate, either by preaching, reading prayers, or otherwise, in the parish or within the parochial cure of another clergyman, unless he have received express permission for that purpose from the minister of the parish or cure, or, in his absence, from the church-wardens and vestrymen, or the trustees of the congregation, or a majority of them." The offense consists in preaching within the cure of another clergyman without express permission, and it makes no difference whether it is done against the remonstrance of any one or not. Now, then, the question is, whether preaching within a Methodist church is a violation of the canon—whether preaching there without express permission was a violation of that canon.

Then the question is, what construction has been put upon the canon by the usage of the Church? Why, I supposed that my friends on the other side venerated the usages of the Episcopal Church, and I supposed that those usages were to be resorted to for the explanation of the canon. When you call the attention of certain members of the Episcopal Church to the practices at St. Alban's, which are offensive, I venture to say, to the great majority of the Episcopal Church, (I hope so, at least,) they tell you that those practices are sanctioned by the usages of the Church, going back beyond the Reformation.

Now, if the usages of the Church may be quoted for that purpose, most assuredly they may be quoted to establish and justify the practice of preaching the Gospel in its purity whenever an opportunity offers of doing good in that way. Therefore, I propose to show what the usages of the Church are in this respect. I do not propose to confine myself to Dr. Stubbs, but I propose to put the same interrogatory to every reverend gentleman sitting here as a judge, and, unless the lips of the clergy are padlocked so they can not speak, I will show that every one of them has done exactly what Mr. Tyng has done in this case—preached within the parish of another clergyman without his permission, or the permission of any one in the parish. Permission has never been thought necessary in such cases. Even during the Sabbath just past there were half a dozen of instances within the boundaries of this parish where preaching was had within churches without permission given to the preacher by any other clergyman or minister in the city of New-York. I hope, then, to be permitted to go on and prove what the construction of that canon has been by the Church to which we all belong, and which we all respect and love. In doing so, I intend to cast no reproach upon the gentlemen to be called as witnesses, because my doctrine is that they have done right, that they have adopted the right construction, have taken the right view, have conformed to the right practices, and have done nothing that should subject them to animadversion or trial, or that

should place them in the position that my client occupies here at this hour; and is it not proper for me, when he has been selected as a victim to be offered up on the altar of prejudice, (I do not refer to this Court,) is it not proper for me to show that he is traveling in the footsteps of his predecessors, in the footsteps of the patriarchs of the Church, that he is only doing what they have done in this city and in the city of New-Brunswick, and everywhere else where the parish was common to the same territory? Is not that proper? What does guilt consist of? Of the intent to do wrong, to commit crime. The intent is the essence of the crime. I ask you, as judges sitting there to sustain or condemn—I ask you whether an element, a most important element, to be taken into consideration in forming your judgment in this case, is not the inquiry whether my client has done exactly as you have done yourselves in the discharge of your duties as ministers of the Gospel, as others have done before you, and, as I trust, others will continue to do after every one present shall have perished from the earth? I hope and trust that this practice has taken a deep root in the Episcopal Church, and that this right will be exercised freely; and I trust that when the judges here shall come to consider this question in all its bearings, and to consider what the practices and usages of the Church have been, they will see that, in order to close a man's lips and prevent him from preaching the Gospel within the limits of New-Brunswick or elsewhere, the Protestant Episcopal Church will have to have some further legislation upon that subject. (Applause.)

I propose now to go on and give this testimony.

Mr. TRACY. The point which is now presented may be quite important in respect to the administration of justice throughout the trial of this cause, and therefore I beg leave to add to the remarks of my associate one or two further considerations, rather by way of suggestion to the Court than of an extended argument. Interpretation, I believe, is a large, an important branch in the two kindred professions, law and theology. I believe the canons of criticism and interpretation are found to be very much the same, whether in jurisprudence, in ethics, or in theology; and as I have, in some degree, traced them in that direction, I may add, that the same principles apply also to the interpretation of the written traditions upon which the Mohammedan system is based. The science of interpretation is the same everywhere, and its canons and rules are very obvious.

Now, the question here is, what does this canon mean? It is a very short answer to say that it means what it says. Of course it means what it says; but what does it say? When it says "cure," does it mean a geographical boundary, or does it mean certain persons? When it says "parish," does it mean so much land with the

sky above it, or does it mean certain people? The question put to this witness is one which involves this inquiry. Now, what is the rule of interpreting such a canon? The first rule to be applied to it is this—that the meaning of the language is to be ascertained from cotemporaneous usage, the usage of those who first applied it in this way; precisely as you go back to the apostolic age to get the interpretation of some things in the teachings of the New Testament. In the same way we go back and inquire in respect to this canon, When was it passed? In what year? In what council? And with what intention? Perhaps I may illustrate this without bringing "the shop" too much into this court, by a reference to the bankrupt law. The question arose whether a bankrupt act was constitutional. As a merely literary question, it would probably have been decided that it was unconstitutional, because the act of 1841 was an insolvent law, and the question came up to be canvassed, what the word "bankrupt," as an adjective, meant, in the years when the Constitution was formed; and when it was ascertained that the word at that time included insolvency, the question was settled. This reference to cotemporary usage is a most important rule in the interpretation of the language of a law.

There is one other mode of interpretation admitted, and that is by reference to the usages of those who are conversant with the subject of the law or canon, and who have to act upon it. For example: among clergymen there are certain canons which are to regulate their lives, and the daily actions which they are to perform; and as clergymen are generally accredited, and justly so, with being conscientious men, studious of their obligations, and desirous of performing them correctly—men who not merely obey the laws of the Church because they are subject to be called to account if they disobey them, but who conscientiously desire to do right for its own sake—their action is a general testimony of how they understand the canon, and what it really means; and we came into this trial without a doubt that it was our right to show, from every legitimate source, the received meaning of this canon, and the usage of the Church under it.

I said, when I began, that I was not going to make an argument, and I am not. I merely wish to remind the Court of a principle that is fundamental, namely, that the usage of the men who are conversant with the matter, whose office and business and duty are to know all about it, and to act upon it, is the very highest evidence of the proper meaning and construction of the canon. We are not going to get at it by resorting to a dictionary and grammar, and determining it in a moment. The interpretation of this law of the Church is just like the interpretation of a law of the Legislature, and the interpretation put upon it by intelligent and conscientious men, acting under

it and seeking to apply it practically, is conclusive evidence of what it means.

Now, we have here upon the stand a clergyman not only, but a clergyman who has been rector of one church for thirty years, who is a doctor in theology, a man of years enough to have had very large experience, and we feel that it is as proper that we should question him upon the subject, as that we should ask any other gentleman about it. Why should we call others while we have one upon the stand who is perfectly competent to give us the usage? I beg the Court to observe that we are not asking now for any new rule. If the usage of the Church, in the interpretation of this canon, shall prove to be contrary to our view and understanding of it, then such will be the decision. But if, on the other hand, this has been the usage of this Church always, if it comes within the text, *Quod semper et ubique et ab omnibus*—"Always, everywhere, and universally received"—if by current and long-continued usage, bishops, priests, and deacons, have acted upon our interpretation of the canon; then the respondent is guilty of no offense. I ask the Court not hastily to exclude this inquiry, which is not merely applicable to this one particular witness, but to every witness now to be called, and which is vital to the proper understanding and decision of this case. This Court is not to shut its eyes to the usage of thousands of men in this country, ministers of the Church, living and acting under the canon, and supposing that they obey it; not merely men of one school in the Church, but men of all schools in the Church. I beg the Court to remember that there is a very important principle at stake in this matter, and to let us have the benefit of putting to Dr. Stubbs this inquiry, which we are entitled to put to other gentlemen.

Mr. PARKER. Perhaps I may be excused for saying a few words, as this is certainly a question of very great importance in the conduct of this cause. My learned friend upon the other side dropped a remark, that it was not *necessary* that this inquiry should be gone into. I apprehend that though it may not be distinctly and absolutely necessary that we should prove this usage in order to have the benefit of an argument founded upon it, or upon the supposition of it, yet that does not touch the point of our right here. The question is not, whether we attempt to prove more than we need to prove; but the question is, whether what we do attempt to prove is relevant to the issue. Now, the question in this case, the point of guilt or innocence, hangs upon one inquiry alone, and that inquiry is this: Is this canon to be construed according to the largest and most extended meaning of its words, or are those words to receive a restricted interpretation, and to be confined to something which is really

criminal? We, on our side, take the latter issue. We say, this canon has a meaning. We shall endeavor to point out and explain what that meaning is. What we want to show is, that no such piece of absurdity and folly can properly be imputed to the conventions and legislatures of our Church as to make those words cover all that the language used in its ordinary meaning imports. It is a logical, it is a usual, it is a legal proposition that we make, that we can here show the universal usage of all clergymen in the Church in regard to that specific point, to wit, that the word "officiate," in this position, should receive a restricted, and not a general meaning. We can begin with the makers of the canon, and can proceed with their successors until we come down to this time, and show that a minister of our Church, when asked to go and preach the Gospel, simply responds as the Lord tells him to respond, "I will;" and does not consider whether he is breaking a canon, taking its language in the most extended sense possible, in which extended sense alone this canon can be supposed to be broken in this case. Now, my learned adversary will not say that cotemporaneous and universal usage is not to be resorted to as a fact auxiliary to other facts, to interpret the meaning of a word. Episcopalians, it seems to me, with their Prayer-Book before them, must see the point and the value of such evidence. Our Prayer-Book, like our Bible, was written at a day when words, many of them, had a different use and meaning from what they have now. I remember that one of our collects implores God that his grace may always prevent and follow us. Prevent, now, has a certain signification—to stand in the way of. Now, can not those who wish to know the meaning of that prayer, go back and study the usage in regard to that word at that time, and the manner in which those who framed the collect intended it, and so get the meaning of the word "prevent" as they used it? I merely cite this for the purpose of illustration.

Mr. FULLERTON. The same word occurs three times in the book of Job, with the same meaning.

Mr. PARKER. Certainly. Here, then, is the word "officiate," which really contains the question in this cause. Now, what is the meaning of that word in that canon? True, we can go to other canons passed at the same time, in order the better to comprehend this canon; but we must, besides, depend upon the usage of the Church. And what better argument can be made to show the meaning of the word used by the Church than to show what every one of the ministers of the Church have done constantly and habitually from generation to generation in carrying out that canon? The very bishops, priests, and delegates who framed it all acceded, one after another, by their daily life, to a certain meaning of the canon, and

that a restricted, and not a general meaning. I very respectfully submit to the Court that there can be no more pertinent inquiry anywhere than that which we now propose to put. We do not propose to put a construction upon the canon by the expressed opinions of men. We do propose to show that all who were concerned with the canon, and who acted under it, acted just as if it never meant what the counsel on the other side and the presentors here think it meant.

Mr. NASH. In closing the remarks applicable to this very incidental point in the case, I shall try to confine myself to the facts before the Court, and to what is relevant to this question. I shall leave it to my friends upon the other side to make their defense (as I suppose it is intended) for those outside of the rails.

Mr. PARKER. Not at all, sir.

Mr. NASH. Therefore I shall not take up any thing that has been said in reference to the parish of St. Alban's, which seems to be a favorite theme with some of my friends. I shall say nothing about that, because I do not think it is before this Court; nor shall I say any thing about the respondent, who has been spoken of as a "victim," except to remark that I do not think that a person who voluntarily takes a position of insubordination can also at the same time consistently play the *rôle* of innocent victim. I think it is about time that they should give up that attitude. (Laughter and applause.)

The CHAIRMAN. I must again request those who are present to abstain from expression either of approval or disapproval. We have no power to keep order here except such as we derive from the good sense and judgment of those who are present, and I trust that they will endeavor to observe the proprieties of the place and occasion.

Mr. NASH. I do not think there is any danger of any violation of the quiet of this house from any thing that I shall say, because I shall confine my argument to the law of the case, and I have merely made these preliminary observations to relieve the argument of some of the accessories which have been brought into it. Now, the presentment does not charge that this respondent violated the canon by preaching in the Methodist house of worship in New-Brunswick. Therefore, his being a shepherd seeking stray Methodists is not in the case. (Laughter.) There is no such charge. The presentment charges the offense committed precisely in the words of the canon, simply adding the particulars of the time and place; so that every thing else may be left out of the case. The present question is as to furnishing the proper evidence to be laid before the Court to aid the Court in putting the right construction upon this canon. Now, it is a general rule of law, to which my friends on the other side will all

accede, that it is not necessary to produce evidence to construe a letter or writing of any kind unless the letter or writing is ambiguous or obscure. You can not introduce obscurity into a thing that is in itself plain, for the purpose of giving evidence to show what it means. In this case we have the fact that the same authority in the Church which enacted this canon also gave it its construction, and put in a definition of the expression "parish or cure," for the purpose of the particular offense charged in this presentment; and therefore all the evidence of usage, or, if you please, disregard of the canon by other parties, will not help the Court at all in putting the proper construction upon the canon. For instance, I suppose that if it were desired to ascertain the proper construction of the Excise law, it would not be admissible to prove, in order to show its right interpretation, that the community habitually disregarded the law, and violated it with impunity. That, I suppose, would be very improper evidence to bring into court for the interpretation of such a law. Now, here the canon (which, I suppose, the respondent knew all about when he was ordained) says that no minister shall officiate within the cure of another minister without his express consent. They propose to show that canon does not mean what it says. Why? Because in certain cases, and particularly in large cities, it is difficult to apply the rule strictly, and they say that, in point of fact, in the interchange of ministerial courtesies in the Church the rule is disregarded, and that in such cases many ministers preach in the churches of other rectors without this "express permission." But is the offer upon the other side to show that it is the universal practice of those who love the good order of the Church to preach in the churches of other ministers, against the express protest of those who are interested? If they can show that, I think the evidence will have some point.

Mr. FULLERTON. We did not preach in your church.

Mr. NASH. Now, section 5, which has been alluded to in the examination of the witness upon the stand, gives one definition (it would appear upon the argument suggested on the other side) of a minister's parochial cure. Concede, if you please, that it does. Section 6 uses the same terms, "parish" and "parochial cure," and then makes this provision: "Where parish boundaries are not defined by law"—[I suppose that all understand what that means, that in some countries the limits of parish boundaries are defined by law as accurately as the limits of any town or village. I suppose that is the case in the State of Louisiana, and perhaps in Virginia, and some other States of this Union, where the parochial divisions existed before the Revolution]—"Where parish boundaries are not defined by law or settled by diocesan authority, under the second section of

canon 5 of title 3 of this Digest, or are not otherwise settled, they shall, for the purposes of this section [not for the purposes of any other section, but for the purposes of this section, the section which prohibits one minister from preaching within the cure of another] be defined by the civil divisions of the State as follows:

"Parochial boundaries shall be the limits, as now fixed by law, of any village, town, township, incorporated borough, city, or the limits of some division thereof, which may have been recognized by the bishop, acting with the advice and consent of the standing committee, as constituting the boundaries of the parish. If there be but one church or congregation within the limits of such village, town, township, borough, city, or such division of a city or town as herein provided, the same shall be deemed the parochial cure of the minister having charge thereof. If there be two or more congregations or churches therein, it shall be deemed the cure of the ministers thereof, and the assent of the majority of such ministers shall be necessary."

Now, if there was any obscurity in this language, if it was difficult for a person to tell what the limits of the city of New-Brunswick were, as defined by law, or what the limits, as defined by law, of any incorporated village, town, township, etc., in New-York or New-Jersey were—if there was any ground in the facts of the case for supposing that the territorial limits of New-Brunswick were not the town lines, as laid down upon the map, or as fixed in the charter, but the portion of the town which was inhabited, then there might be some reason for supposing that there was some ambiguity in this language, and some reason for resorting to extraneous means to aid in construing it.

As I have already said, evidence of usage is not admissible in such a case, except where there is an ambiguity to be explained; but if it is proper at all, it is a well-recognized rule, in all civil tribunals, that usage is to be proved by the testimony of witnesses familiar with the usage, who testify to its general existence, to the length of time it has existed, and the region within which it has existed, and not by individual instances. It is like proving bad character against a man. You can not prove that a man's character for truth and veracity is bad, by showing individual instances of his departure from rectitude, but only by showing that that is his general character in the community. The reason of the rule is, that if you prove any general fact of this kind by individual instances, you raise innumerable issues, to be tried in the same case; while general evidence as to character or usage may be met by general evidence of a contrary kind. Now, if the proposition on the other side is to prove the existence of an immemorial usage from the time of the first organization of the Episcopal

Church in this country as an independent church, down to the present time, and to prove it by individual instances, why, we have a labor before us which, I suppose, will last during the lifetime almost of the members of the Court. The witness upon the stand is undoubtedly competent to speak as to any usage of the Church which counsel may ask him about; but it is not competent to prove usage of any kind, as a matter of evidence, by showing individual instances of it.

Now, the arguments of the different counsel upon the other side are a little inconsistent. Among the many advantages of having one case represented by a variety of minds, it is one of the disadvantages that sometimes they do not always agree. The counsel who last addressed the Court, stated that his object was to prove the meaning of the word "officiate." The object of another of the counsel is to prove that because this law is habitually broken, therefore, no consent is necessary for a minister who desires to preach in the cure of another. To say the least, these two propositions have certainly no connection. But the other counsel takes up another view of the case, and insists that this testimony is proper for the purpose of freeing the respondent in this case from any guilt, or intent of guilt, because, he says, all criminality consists in intent. Now, looking over this presentment, I do not find intent of any kind charged. The general rule of law is, that intent is to be inferred from the facts of the case, and if a man is guilty of a clear violation of the law, he does not exempt himself from the proper penalties by showing that he had some high or noble intent, which relieved him from the obligations which ordinary individuals are subject to.

To close my remarks upon this subject, I object to the evidence as irrelevant; as having no bearing upon the proper construction of this canon as applicable to the facts proved. It might be applicable to a case, and it seems to me to be only applicable to a case, of a man having gone into the parish of another minister, presuming upon his consent, not having had any evidence to the contrary, and having officiated upon that presumption; but it has no application to a case like this, which, on the testimony, so far uncontroverted, is the case of a minister officiating within the territorial limits of what we claim to be the parish, or parochial cure of the rectors of New-Brunswick, not only without any implied consent on their part, but against their wishes and their express protest.

Mr. Fullerton. The vital importance of this question induces me to ask permission to make an observation or two in reply.

Mr. Nash. It is with great delight that I listen to my friend on most occasions, but it seems to me that when three counsel have been heard

on their side, and only one on the other, it is hardly fair that they should argue the matter further.

Mr. FULLERTON. The gentleman ought not to object to having me delight him a few minutes longer. (Laughter.) The vital importance of this question, and the fact that my learned friend, who did not open this discussion, has adduced arguments to which I have had no opportunity of replying, induces me to ask permission to make a few additional observations.

The CHAIRMAN. I think we have heard enough argument to enable us to give a proper decision to this question.

Mr. FULLERTON. Well, sir, if the hearing is denied, I must submit.

Rev. Mr. MOORE. Will the Clerk have the kindness to read the question upon which this discussion arose?

The Clerk read the question—"Did you ever preach in the city of New-York?"

Rev. Mr. MOORE. That is the whole of the question?

The CLERK. Yes, sir.

After some time spent in deliberation,

The CHAIRMAN said: The Court have come to the conclusion that the testimony of individual clergymen could only establish their own individual practices, and that, in order to establish in this way the general usage of the Church, it would be necessary to bring forward here such a number of clergymen to testify, that the case would be interminable, even supposing that, after they had established the general usage of the Church, that usage would be sufficient to establish the proper interpretation of the canon, of which the Court are not clear. We therefore sustain the objection to this testimony.

Mr. FULLERTON. It will be necessary now for me to be a little more definite in my offer, because the question put, upon which the testimony arose, involved nothing more than preaching in New-York, irrespective of the question of consent. Therefore, I will put my question generally, and then the ruling of the Court may be attached to it, and we will pass on.

First, I propose to prove by this witness that the following named ministers of the Episcopal Church, namely, Rev. Mr. Franklin, Rev. Alfred B. Baker, Rt. Rev. Bishop Southgate——

Mr. NASH. He is Bishop of the Greeks.

Mr. FULLERTON. Yes; but sometimes he pays attention to the gentiles. (Laughter.)

Rev. Dr. Hoffman, Rev. Dr. Twing, Rev. Mr. Goldsborough, and Rev. Mr. Appleton, preached and officiated at various times within the limits of the city of New-Brunswick, and within the territorial boundaries of said city, without having first obtained or received "express permission" for that purpose, under the 6th section of

canon 12, title 1 of the General Convention of the Protestant Episcopal Church; none of said clergymen being settled pastors in that city.

Mr. NASH. Counsel for the presentors object to the evidence upon the grounds that the acts of the clergymen named are not competent to prove any general usage in the Church, and are irrelevant to the question whether the respondent committed the acts charged in the presentment. I suppose the decision already made covers this particular offer.

Mr. FULLERTON. Yes; it may be rejected now on the grounds already stated by the Court. I put the offer in this form to make it congruous with the ruling of the Court.

I also propose to prove by this witness that on numerous occasions since the establishment of the Episcopal congregation in New-Brunswick he has invited non-resident ministers of the Protestant Episcopal Church to officiate, and they did officiate in Christ Church, of which he was the rector, without having asked or received "express permission" for that purpose from Dr. Boggs, the rector of the Church of St. John the Evangelist, in said city, or from the church-wardens and vestrymen, or trustees of the congregation, or a majority of them.

I also propose to prove by this witness that the said Dr. Boggs has, under like circumstances, given like invitations, which have been accepted, and that the persons so accepting have officiated in his church without having received "express permission" for that purpose from Dr. Stubbs, or from the officers of his church. This proof is offered for the purpose of showing by the witness that, to extend such invitations, and to permit such officiating without such permission, is the usage and custom of that parish common to both congregations.

Mr. NASH. Counsel for the presentors admit the facts stated in the last above offers, and they also offer to admit that it is the uniform usage in the Protestant Episcopal Church for any minister thereof, invited to do so by the minister of another congregation or parish of the Protestant Episcopal Church, to officiate on such invitation in the church or parish of the minister so inviting, without the express permission of any other minister in the same village, town, township, incorporated borough, or city, or of the church-wardens, vestrymen, or trustees.

Mr. FULLERTON. Won't you strike out the words "offer to," Mr. Nash?

Mr. NASH. Certainly, if you wish it.

Mr. FULLERTON. I further offer to prove by the witness on the stand, that he has been in the habit, from time to time, of officiating

in the city of New-York, and other cities containing two or more parishes, with common territorial limits, without having obtained the express permission for that purpose required by the 6th section of the canon already referred to.

Mr. NASH. Counsel for the presentors admit that the witness has from time to time officiated as stated in this offer, upon the invitation of the minister in charge of the church where he so officiated, or of the church-wardens and vestrymen of the same.

Mr. FULLERTON. That is all with Dr. Stubbs.

Mr. NASH. I want to ask him one or two questions.

Q. Dr. Stubbs, from whom did you first receive your information that Mr. Tyng proposed to officiate in New-Brunswick, on Sunday, July 14th, 1867?

A. From Rev. Dr. Boggs.

Q. Where did he give you that information?

A. At Rocky Hill, near Princeton, where he came to attend an ordination.

Q. Was the Bishop of New-Jersey there?

A. The Bishop was there.

Q. Did you consult him on the subject?

Mr. FULLERTON. I do not suppose that that is proper.

Mr. NASH. I only propose to ask this question: Did you consult the Bishop on the subject?

The WITNESS. I did.

BY REV. MR. HOLLINGSWORTH.

Q. On what day did you write this letter? Did you deliver it on the same day that you wrote it?

A. That is my impression, sir.

Q. On what day?

A. On Saturday, very early in the morning—Saturday, the 13th of July, I wrote the letter.

Q. It is dated at "Princeton, July 12th"—that was a mistake on your part?

A. Yes, sir; I wrote my first letter at night, and in the morning I revised it, and, I suppose, did not change the date.

BY MR. FULLERTON.

Q. Were you acquainted with Rev. Stephen H. Tyng, Jr., at the time of writing that letter?

A. I had met him once in New-York City, and had had a very pleasant conversation with him. (Laughter.)

By Mr. NASH. Did you ever offer the use of your church to the

respondent, or authorize the offer to be made to him, if he desired to preach in New-Brunswick?

Mr. FULLERTON. The Court discovered yesterday some testimony that was entirely irrelevant to the case. I submit whether the same discrimination would not exclude this. I do not see what it has to do with this controversy.

Mr. NASH. Do you object to it?

Mr. FULLERTON. I make the suggestion that this has nothing to do with the case. Evidence was stricken out yesterday by the Court without objection on your part, and I only want the same office performed by the Court, in the same way, when you offer irrelevant testimony.

Mr. NASH. If there is any doubt of the relevancy of the question, I withdraw it.

Q. Is that the handwriting—the signature—of the Rev. Dr. Boggs?

A. Yes, sir; that is the signature of Dr. Boggs.

Mr. NASH. Counsel for the presentors now offer in evidence the following papers, the genuineness of which is admitted:

[The papers put in evidence by Mr. Nash at this point were, the letter of Bishop Odenheimer to the ecclesiastical authorities of the Diocese of New-York; and the letter of Rev. Dr. Stubbs and Rev. Dr. Boggs to the Bishop of New-Jersey, dated July 16th, 1867.]

The said papers thereupon were read as evidence, being as follows:

"TO THE ECCLESIASTICAL AUTHORITIES OF THE DIOCESE OF NEW-YORK:

"In obedience to section 1, canon 3, title 2, of the Digest, I hereby give notice that Rev. S. H. Tyng, Jr., belonging to the Diocese of New-York, has conducted himself in the Diocese of New-Jersey in such a way as is contrary to the rules of the Protestant Episcopal Church.

"With this information, I exhibit this letter appended, marked A and B, as containing reasonable grounds for presuming its correctness.

W. H. ODENHEIMER,
Bishop of New-Jersey.

"BURLINGTON, N. J., July 16, 1867."

"TO RIGHT REV. W. H. ODENHEIMER, BISHOP OF NEW-JERSEY:

NEW-BRUNSWICK, July 16, 1867.

"RIGHT REVEREND AND DEAR BISHOP: We think it our duty to inform you of a violation of the laws of the Church which occurred in this city on Sunday last, the fourth Sunday after Trinity.

"Rev. Stephen H. Tyng, Jr., of the Diocese of New-York, officiated both morning and evening in the Methodist house of worship, known as St. James's church, without permission and against remonstrance, intruding within our parochial cure; and in celebrating divine service not as the Church prescribes, thereby violating canon 12 and canon 22, title 1, of the Digest, subjecting himself to the penalty for misdemeanor under canon 3, title 2. We fear that, if this offense be not reproved, it may be repeated, to the great injury of the Church in this place, and therefore we lay the matter before you, that you may take such order in the case as in your judgment may best protect the interests of the Church.

"ALFRED STUBBS,
Rector of Christ Church.
EDWARD B. BOGGS,
Rector of the Church of St. John the Evangelist.
S. V. HOFFMAN,
Senior Warden of Christ Church."

The presentors rest their case.

Mr. FULLERTON. We suppose that it is proper enough to put these papers in, because they form a part of the history of this case; but not as furnishing proof of any other offense than that which is set out in the presentment.

Mr. NASH. We do not offer them for that purpose, but simply as a part of the history of the case.

Mr. TRACY, for the respondent, then addressed the Court as follows:

May it please the Court, the prosecution having rested, and having at the last moment put in certain evidence which tends to define the charge and to locate it on a particular page and section of the canons, it becomes our duty, as counsel for the respondent, to call the attention of the Court to the presentment itself. The thing charged on this trial—the thing here proven or sought to be proven—is not the offense for which the Bishop of New-Jersey ordered Mr. Tyng to be proceeded against. There is a canon of this Church, in divers sections, upon the general duties of clergymen, defining what things may be offenses in them; specifying certain grosser immoralities, and also certain public crimes, of which they may possibly be guilty, and also including among offenses a great many things which relate to mere matters of appointment and to arbitrary regulations. For example, positive conformity to every thing which is contained in the book of Common Prayer and in the canons of the Church is required, and every breach of the requirements is made an offense. If a minister violates the canon by not reading the proper lesson, or

by omitting the lesson, it is no defense to him to say that he forgot to do it, or that he mistook the morning for the evening or the evening for the morning. That might be a ground with the bishop for letting him off lightly, but he would certainly be guilty of an offense by reason of violating the rubric; and yet, with respect to all these minor matters, the Book of Canons of the General Convention leaves it in the power of every diocese to regulate, through its ecclesiastical authorities, the conduct of its ministers within its own domain. But they can not regulate the conduct of their ministers abroad in reference to such matters. The Church does not undertake to exercise discipline in the Diocese of New-York for what its clergymen may do when they are in a foreign country or in another diocese, with the exception of certain precise things of grave character, and which are plainly characterized in canon 3, of title 2, section 1, of the General Convention. This special canon provides that a clergyman resident in one diocese, if he does certain things in another diocese, is liable to be impeached therefor in a certain way. The Court will observe that these papers which now are in evidence—namely, the letter of Dr. Stubbs, protesting in advance against Mr. Tyng's preaching or officiating in New-Brunswick, and the communication from the two Episcopal clergymen of that city, Dr. Stubbs and Dr. Boggs, dated July 16th, 1867, and addressed to Bishop Odenheimer, of New-Jersey, accusing Mr. Tyng—all describe his offense as a violation of canon 3, title 2, section 1.

This is the ground whereon they plant the accusation—that, being a non-resident of the Diocese of New-Jersey, he has come into a parish in New-Jersey and officiated, and thereby has violated canon 3, title 2, section 1. Then what does the Bishop? He proceeds according to canon 3, title 2, section 1, and announces to the ecclesiastical authorities of the Diocese of New-York that such an offense is charged to have been committed in his diocese by Mr. Tyng. The first section of the canon is as follows:

"If a clergyman of this Church, belonging to any diocese or missionary district, shall, in any other diocese or missionary district, conduct himself in such a way as is contrary to the rules of this Church and disgraceful to his office, the ecclesiastical authority thereof shall give notice of the same to the ecclesiastical authority where he is canonically resident, exhibiting, with the information given, reasonable ground for presuming its correctness. If the ecclesiastical authority, when thus notified, shall omit for the space of three months to proceed against the offending clergyman, it shall be within the power of the ecclesiastical authority of the diocese or missionary district within which the alleged offense or offenses were

committed to institute proceedings, and the decision given shall be conclusive."

This is a very short law. It is made in analogy with the general laws of all civilized nations, that for all offenses which he may commit in his own country a man is to be dealt with at home, within the community to which he belongs; but with respect to offenses committed beyond the borders of that community, there are restrictions and limitations as to the way in which he shall be proceeded against, and that as to some of even the graver offenses committed abroad there is no responsibility of government exerted at home. The Court is familiar, as every one is, with cases of extradition, as they are called in the newspapers, in which a man is taken from one country to another to answer for some offense; and we all know that with regard to the smaller offenses generally, and also with regard to some grave offenses committed in a foreign country, there is no civilized nation which acknowledges the right of extradition.

Now, the law of the Episcopal Church is, that a minister is to be answerable for whatever he does in the nature of an offense out of his own diocese if the act has two qualities—not one quality, but *two*. First, it must be contrary to the rules of the Episcopal Church; and, second, it must be "*disgraceful to his office.*" Observe that the list of offenses committed in his own diocese for which a minister may be tried and punished, as I said before, is a very extended one, and it includes a great many things which are merely offenses against conventional rules, the breach of which, though technically an offense, is no disgrace to the clerical office. The mere fact of preaching the Gospel in a certain place, if it is done decorously and in a manner not offensive to the public taste, is certainly not disgraceful to his office; nor would the celebration of divine service, under some circumstances, be disgraceful to the office of a clergyman, though it might be in others—for instance, in the presence of a tumultuous or riotous crowd. Other circumstances might make the act of celebrating divine service offensive and perhaps disgraceful to the office of a clergyman; but as to the mere fact of preaching the Gospel, or the mere fact of reading prayers, charged without any allegation of being done under circumstances so unsuitable or offensive as to be a reproach to religion, no one for a moment can say or think it to be disgraceful to his office.

Suppose that the ecclesiastical authorities of this diocese, having received notice of a misdemeanor committed by Mr. Tyng in the Diocese of New-Jersey, had declined to do any thing about it, then what would follow? The canon tells us:

"If the ecclesiastical authority, when thus notified, shall omit for the space of three months to proceed against the offending clergyman, it shall be within the power of the ecclesiastical authority of the diocese or missionary district within which the alleged offense or offenses were committed to institute proceedings, and the decision given shall be conclusive."

Thus it is seen that if the ecclesiastical authorities of the Diocese of New-York fail to proceed against the offender, he is to be proceeded against by the authorities of the Diocese of New-Jersey. When those New-Jersey authorities determine to proceed against him, how may they act? With what offense may they charge him? Are they to try him for neglecting to wear a gown or surplice, or for attiring himself in some extra ecclesiastical dress, some dress offensive to their taste? No, not at all. When he is arraigned in New-Jersey, he must be arraigned for doing something which is not only a violation of the rules of this Church, but is also disgraceful to his office. The authorities must act under canon 3, section 1.

The CHAIRMAN. Are we to understand you as holding that the proceedings against offending clergymen, after proceedings have been commenced, are to be confined to canon 3?

Mr. TRACY. Most clearly so, if the offense is committed out of his own diocese.

Mr. NASH. This seems to be a motion to dismiss, although the counsel has not so stated.

Mr. TRACY. I am proceeding to address the Court on the case of the presentors; to show that they have no cause sustainable here.

Mr. NASH. I wish the counsel would state what his motion is.

Mr. TRACY. I am stating it. I say that the allegation and the proof of the presentors, put together, do not constitute an offense under this canon 3; and there is no ground on which to hold the respondent.

Mr. NASH. Then you move to dismiss him.

Mr. TRACY. I move that he be acquitted now. What else did I get up for, but that?

Mr. NASH. That is what we have been trying to find out.

Mr. TRACY. I trusted to your sagacity to guess as much as that. The general term by which, in another canon, any act for which a minister may be prosecuted, is called an "offense," whether it be against a moral or a merely technical rule or obligation; but when we come to this canon 3, its title indicates what it is about. The running title at the head of the page is, "Misdemeanor in another Diocese;" and the special title of the canon is, "*Of a Clergyman in one*

Diocese or Missionary District chargeable with Misdemeanor in another District." This is in analogy with the general use of the term misdemeanor, which means a wrong act, a crime, and not merely a breach of artificial order or propriety. After this title, the canon proceeds to define the character of the offense, and it says, "If a clergyman of this Church, belonging to any diocese or missionary district, shall, in any other diocese or missionary district, conduct himself *in such a way as is contrary to the rules of this Church, and disgraceful to his office*," (observe the language of the canon. It is not that he does some particular act, or offends against some particular rule, but it is that he *conducts himself*, the language having direct reference to the moral character of the transaction,) "the ecclesiastical authority thereof shall give notice of *the same* to the ecclesiastical authority where he is canonically resident, exhibiting with the information given, reasonable ground for presuming its correctness." If he does something that is both a breach of the law of the Church and disgraceful to his office, then he may be proceeded against in this way. The plain intent of the law can not be mistaken.

While our local canon in this diocese directs how proceedings against an offending clergyman are to be had, it does not change the nature of the charge or the offense. This respondent is not to be tried in New-Jersey for one thing, and here for an entirely different thing, when, if he has committed any offense at all, he has committed only one. He has been called upon to answer before this Court for a misdemeanor committed in the Diocese of New-Jersey, for which, if he had not been proceeded against here, he might have been called upon to answer in New-Jersey; and that offense is a violation of canon 3. That is what was complained of by these two clergymen; that is what Bishop Odenheimer sent over to this diocese; that is what the Standing Committee considered and acted on; and if these presentors have presented something else, their presentment is a nullity. If they have put in the presentment an offense of some other kind, the presentment is unauthorized, and amounts to nothing at all. This Reverend Court can see that the charge in this presentment does not correspond with the definition in the canon. No one on this trial has had the hardihood to say, much less to attempt to prove, that what Mr. Tyng did in New-Brunswick was disgraceful to his office. That he did what, in the diversity of opinions upon that subject, might be regarded by the presentors as a violation of some of the rules of the Church, I will not deny, and no doubt the committee who made the presentment so considered it. There is no doubt about the integrity of those gentlemen; indeed, they were too true men to put their hands to a paper and say that what Mr. Tyng did was disgraceful to his office, although they considered it to be a violation of the rules of

the Church. Doctor Stubbs, in putting forward his accusation, asked to have Mr. Tyng proceeded against under canon 3, and the Bishop, upon the representations made to him, proceeded against this respondent under canon 3; and the offense came down on the same track, and in the same train, until the road branches off to New-York; and now we find, as it comes into New-York it is one thing, while in New-Jersey it was another. No practice of this kind can be sustained. There is no getting away from the unity of this case. It begins in New-Brunswick, goes through the Diocese of New-Jersey, in regular form, comes to New-York, and should stand here before this Court still in the same form, still the same misdemeanor; and if Mr. Tyng is to be tried here for any thing, it must not be for some charge that has been got up in this diocese, but for the original offense, alleged to have been committed in New-Jersey in violation of canon 3; that is to say, by some conduct of this respondent in violation of the rules of the Church, and disgraceful to his office. That is our offense, or we have committed none. There is no clergyman anywhere—I will not accept any man who calls himself a clergyman—who would say that it was disgraceful to his office to go into a Methodist church and offer prayers and preach the Gospel, there being no question about the prayers being devout, and the Gospel genuine.

The Court will, perhaps, allow me to relate an incident. It is a little thing, and about a little child; but our Saviour once, when there was confusion among his disciples, took a little child and set him in the midst of them; and that is what he has done in this case. A little boy heard about a clergyman being on trial for preaching, and said he, "Whom did he preach to?" He was told that it was to the Methodists. "Well," said the little fellow, "are the Methodists creatures?" "Yes, to be sure they are." "Then," said the child, "I think it was right to preach to them, because the Lord said they were to preach the Gospel to every creature." (Applause.)

Certainly there is nothing disgraceful in the act with which the respondent is charged. It is the glory of you, reverend gentlemen, that you lead men to prayer and worship, and teach them the Gospel.

The CHAIRMAN. I must remind the counsel that Rev. Mr. Tyng is not upon trial for preaching in a Methodist meeting-house. That should be distinctly understood. No such charge is before us.

Mr. PARKER. It is for preaching at all, I suppose. (Laughter.)

Mr. TRACY. The Court means that no such charge is before it *in writing*. I have seen witnesses brought into court here on this trial, and I thought they were brought to impress the Court with the facts they swore to. And among the most prominent of those facts was, that Mr. Tyng did preach twice in that Methodist church in New-Brunswick. He is charged with so preaching; and the proof is, that

he did so preach. If that is not the accusation here, I would like to know what else he is charged with.

The CHAIRMAN. He is charged with violating the canon by preaching in another minister's parish without permission.

Mr. TRACY. Then suppose that he preached in that parish without permission. At any rate, so long as what he did was not offensive or harmful to that parish or that ministry, the Court will hardly say that what he did was disgraceful to his office. Just look at the canons and see the list of offenses of which a man may be guilty, which would come within this definition of being disgraceful to his office. Drunkenness, resorting to gambling-houses, a violent assault; these are offenses against morality, are crimes, and generally so described. There is a list given of such offenses, including the ones I have named, and such others as profane swearing and frequenting places of improper resort. Scandalously immoral conduct is mentioned in general terms. And then there are specified other offenses of a totally different sort, such as violating the canons of his diocese, disuse of the Eucharist according to the offices of this Church, and preaching heretical doctrines. All these offenses, the smallest and the most grave, are mingled together in the canon under the proper general head of offenses; but when you come to a misdemeanor, the only place where it is defined is in canon 3; and there it is described as conduct "contrary to the rules of the Church and disgraceful to his office." The principles which control the proceedings against a clergyman for any offense are all given in the book. We had them already in usage, but they are also carefully expressed in the canon, (more especially with reference to the trial of a bishop;) and it is laid down that the charge in a presentment must be specific, and must contain all the elements of the offense. I, therefore, now ask the Court to observe a matter which is so clear to my mind that there is little to be said about it further than to state it, that this presentment is bad on its face, because it does not allege that the accused conducted himself in a manner disgraceful to his office. It does not even insinuate any such thing. If it could be supposed to be held, as a matter of legal conclusion in your own minds, that the preaching of Mr. Tyng in that place, and his omission to conform strictly to the rubric, constituted conduct disgraceful to his office, still, if he is to be charged with an offense of this character under this canon, it must be set out and alleged in the presentment that his conduct was disgraceful to his office, or else the presentors can not be permitted to prove it. To allege that he preached there is not enough, even if you deem that act to be disgraceful. The presentment must allege that it was disgraceful. It is on the same principle that an indictment for murder is not good unless the word "mur-

der" is used in it. An indictment, or a presentment, which is the same thing, must set forth the crime and the elements of the crime, or else it is bad on its face, and the accused is entitled to an acquittal. But here is a presentment which does not set out the misdemeanor and its elements, and which, therefore, is bad on its face.

Let us now see if there can be any possible evasion of this. Is there any way of showing that this is an original prosecution, got up in the Diocese of New-York without any reference to the Diocese of New-Jersey or to the charges which come from that diocese? Not at all.

The first argument to show that it is not such new charge is derived from the canon itself. The only difference which the lapse of the three months mentioned in the canon makes is to change the place of trial; the charge must be the same here that it was there; and the supposed offense does not become any worse, or any other than it was originally, by being transferred for trial to this diocese after the lapse of three months. The New-York canon 17, section 1, reads thus: "The trial shall be on a presentment in writing, specifying the offenses of which the accused is alleged to be guilty, with reasonable certainty as to time, place, and circumstances."

Thus the particular offense is to be specified with certainty. Look then at the presentment in this case. [Reads the presentment.]

The presentment is for preaching in another's parish without permission. That is all there is of it. It is signed by the presentors. The matter sent to them to inquire into was an alleged violation of canon 3 in the Diocese of New-Jersey, triable first there, and only secondarily here; and they present the respondent for conduct which is in violation of the rules of the Church, as they say; but not for conduct that is disgraceful to his office.

If one is charged with a violation of the canons of the Church in his own diocese, it is not necessary to set forth that such conduct is disgraceful to his office, because that is not requisite to the offense in such a case, and therefore this might be a good presentment if the offense charged had been committed in Westchester county, or in the city of Poughkeepsie, or anywhere in this diocese; but this offense, if there was an offense, was committed in New-Jersey, and the five gentlemen who drew up and signed this paper had no power to dispense with the requirements of the Church. They were not appointed to override the General Convention, and draw up a new kind of indictment on their own responsibility. As I have already said, they were too true men to charge him with having done any thing disgraceful to his office, and that charge has not been made. If that charge were made, we would have a right to take issue upon it, and to show that he was not guilty of it; and if it were proved he had

done any thing disgraceful to his office, then, in his own name, and in his father's name, I would beg the Church to discipline him.

I have referred to the way the presentment is to be drawn. Let us now notice what persons may make a presentment. It may be made by the major part in number of the vestry of which the accused is a minister, or by any three presbyters of his diocese. These are the only ordinary sources of accusation. It may proceed out of his own congregation, or it may proceed out of his own diocese by three presbyters of the diocese. The only other case is where the bishop may cause a presentment to be made, and may become the accuser, so to speak. "Whenever, from public rumor or otherwise, the bishop shall have reason to believe that any clergyman is under the imputation of having been guilty of any offense or misconduct for which he is liable to be tried, and that the interest of the Church requires an investigation, it shall be his duty to appoint five persons, of whom three, at least, shall be presbyters, to examine the case, a majority of whom may make such examination; and if there is, in their opinion, sufficient grounds for presentment, shall present the clergyman accordingly." (New-York canon 17, section 1.)

The third source of accusation, then, is the Bishop.

There are only two ways in which the bishop is to be set in motion, namely, by "public rumor, or otherwise." In the present case it was not public rumor, and the "otherwise" was by the communication of Bishop Odenheimer to the Bishop of New-York. The Bishop of New-York was, therefore, compelled to take action under this canon 3, and if he had failed or neglected to do it, he would have subjected one of his presbyters to be tried in a foreign jurisdiction; and so the bishop of this diocese, with Bishop Odenheimer's charge before him, proceeded to the appointment of the Com mission, who made this presentment of a different charge.

Here are the three sources of accusation, lay, presbyterial, and episcopal. It may be, first, from the wardens or vestrymen of the minister himself; or, second, from three presbyters of his brethren in his own diocese; or, third, from his own bishop, impelled by rumor or otherwise. Now, we have traced the succession of the accusation against Mr. Tyng all the way through, and it is perfect. An unbroken line of autographs of prelates from St. Peter down would not be more complete than this line of succession. It begins with Dr. Stubbs, goes to Dr. Boggs, then to Bishop Odenheimer, and then, under the "otherwise," it comes to our Bishop here. That is the chain of succession, with no link wanting, and the character of the offense can not have changed on the way.

We are here to-day to try Mr. Tyng for an offense under canon 3; and if there is to be law in the Church, if there is to be law re-

ceived among men, he must be tried here for that offense, and nothing but that. The presentors themselves would not say in their presentment that he was guilty of the offense of conducting himself in any wise contrary to the rules of his Church, and disgraceful to his office. They have no knowledge of that; and it is impossible for this presentment to stand with the vital defect of this omission.

The term "misdemeanor" in the heading of canon 3 is a word with a familiar meaning. Worcester defines it as "a lower kind of crime, an indictable offense not amounting to a felony." When you look for the meaning of the word "offense," you find that it includes "the transgression of a law;" and when seeking what kind of an offense is "disgraceful," you find that it means "dishonorable, ignominious, base, mean, vile, scandalous." Those are the definitions of the dictionary.

One can imagine a case in which a clergyman of this diocese might be found in a state of intoxication, or engaged in some very gross, wrong, and abominable conduct. Such things have happened, and may at any time happen again, because of the fallibility of all earthly beings. That certainly would be very "disgraceful to his office." There are other offenses that would or might also be disgraceful to a minister's office. He must not go to a rowdy horse-race; he must not go to a disreputable theatre, which is generally condemned; he must not be a curser or swearer; all these things are "disgraceful to his office." But there are a thousand offenses which are justiciable matters under these canons, and yet are not disgraceful to his office. A minister may be disciplined for any violation of a canon or of a rubric; and often he may with innocent intentions violate a canon. You clergymen are sometimes called upon to perform missionary duty under circumstances where you can not conveniently, and in fact do not use, the whole of the Common Prayer; but you do not thereby disgrace your office. For ten or fifteen years a society of this Church has had a clergyman preaching upon the dock Sunday morning and afternoon, and delivering only portions of the Common Prayer, from a tract printed for the purpose; and he has done it before some of the wisest men in the Church, and under the eyes of a bishop on some occasions. That tract was prepared and printed without asking the leave of any Convention, or the authorities of any diocese; and I may say that when on the Committee to prepare it, we conferred with clergymen, including a head now wearing the mitre, and were told that such abbreviations belonged to the common missionary privilege of clergymen. Yet if this devoted missionary at large to seamen, were brought up for violating the rubric in that way, he would surely be found guilty, according to interpretations of strict constructionists.

The Bishop would of course say to him, "Go in peace;" but as to its being an offense, according to the interpretation mentioned, there can be no doubt. Suppose a clergyman should come here from New-Jersey, and go down to the missionary station and read from that tract entitled "Worship," would such a violation of the rule be disgraceful to his office?

Take another case. A clergyman is officiating on a rainy day, or he sees a great storm coming up, and, in order to let the congregation reach home in comfort, he shortens the service; it is a violation of the rule, but would it be disgraceful to his office? Or a clergyman finds himself a little unwell, and for that reason abbreviates the service; it is an infraction of the law, but is it disgraceful to his office? I beg leave to call the attention of the Court to the wide difference between *mala in se* and *mala prohibita*, between the things that are in themselves wicked, and therefore disgraceful, and things which are now wrong only because forbidden, but which may be permitted or even commanded hereafter. If the Church should change a portion of the Common Prayer, and a clergyman should continue to read the present form, after the change was made, that would be wrong, because prohibited. Thus, what is right now, would be wrong then, according to the arbitrary rules of the Church. Herein is the authority of the Church, an authority which devolves upon each generation in its turn, and the regulations so made are, of course, to be observed; but it is idle to say that one minister's going and preaching in another's parish is in itself wrong or disgraceful, when at most it is but a violation of a mere appointment of the Church, which may be changed at any time, and which might be so changed as to make it an offense for him to refuse to go and preach in another's parish when asked to do so by any five citizens of that parish. Those things only are disgraceful to a man's office, which are "dishonorable, base, mean, vile, scandalous, shameful, ignominious," or which have at least some of these qualities.

I now proceed to another branch of the matter. A presentment being made in any one of these three modes—that is, on the complaint of the church-wardens of the accused, on the complaint of his brethren of his own diocese, or on the complaint of the Bishop, moved by public rumor or otherwise, (in this case the Bishop being moved by the complaint received from Bishop Odenheimer,) the proceedings are regulated by the New-York canon. The Bishop may dismiss the presentment if the facts charged shall not appear to him to constitute an offense; "or if it allege facts, some of which do and some of which do not constitute an offense, he may allow it in part and dismiss the residue, or he may permit it to be amended." These proceedings are wholly *ex parte* before the Bishop, and nobody is

ever heard, and almost as a matter of course he allows these presentments when made and sends them to be tried. The members of this Court should appreciate the weight and dignity of the position which they hold in the administration of justice in this case. The Board of Presbyters, whom for greater convenience and with more propriety we here call the Court, is a tribunal to examine the whole subject. You are here in the same position as a court of criminal jurisdiction, where a man is sent to be tried; but you are more than a court, for you act both as judges and jury. You are to find the facts and to adjudge the law, and you are also to name the sentence, if one is to be pronounced. How sweeping is your authority! After you have heard and decided, and have named the sentence, the case goes to the Bishop, who, however, has no greater authority in the matter than you, except to order a new trial by error, or to reduce the punishment. You are, therefore, in the position of a criminal court sitting in special session without a jury, to try an indictment. You have before you a certain charge. The pedigree of that charge is shown to you in an unbroken line. It originated in the Diocese of New-Jersey, and it rests at that end upon canon 3, section 1, and has no other possible foundation. If Mr. Tyng's vestrymen had entered a complaint against him for preaching in New-Jersey, that would be another story. If three clergymen of this Diocese of New-York had entered a complaint against him, that also would be another affair. But neither of these is this case. It is the Bishop's presentment of Bishop Odenheimer's accusation. The Bishop of New-York does not make this charge; he merely reflects it. He could not treat it as good for nothing and disregard it. That is not his function. If he did not proceed with it, they would do so in New-Jersey. He was charged, therefore, in this case, not with a judicial, but with a mechanical duty. Bishop Odenheimer had said that it is sufficient ground for a prosecution, and the Bishop of New-York merely passed the matter along as it came to him. He might, to be sure, have let it lie for a time; but if he had not taken action on it, at the end of three months Bishop Odenheimer would. The canon makes this body judges in this case of the whole accusation and its proof, and of the punishment if it is proved. In the regulations given by the General Convention for the trial of a bishop, (which have been followed in the trial of presbyters, even to the form of an oath when required,) it is said that the law of the country, in regard to the admission of evidence, is to be the guide.

That principle has been applied by this Court most handsomely in their recognition of the rules of law by which they are to be guided in receiving proofs. This, then, is a tribunal charged with this whole matter, with its history, with its whole line of life down to this day;

and now this Court is called upon by the counsel for the presentors to hold a man under the New-York canon for what he is said to have done in New-Jersey, without its being alleged that the offense had those elements in it which would make it justiciable in New-Jersey. The Court has a judicial discretion to exercise, and is not compelled to sit here and consider every sort of charge which may be brought forward. Suppose one was charged in a presentment with having preached four times on Sunday; you would not be bound to sit here and try that. Why not? Because the thing charged would not be an offense. And if a man is presented here merely for preaching in the parish of another minister in New-Jersey, that being the whole of the case, you can not try him for that either, because it is not a misdemeanor. But if he is presented for preaching in another's parish out of his own diocese, in such a manner or under such circumstances as to be disgraceful to his office, that is a misdemeanor, and you may try him and you must try him for that very thing or not at all. Now, I trust it to the broad comprehension of this Court — as I would trust it to any body of intelligent men, though they might not be jurists or logicians by profession—that there are some things in this world outside of the Church as well as in it which are sacred, and one of those things is the right of a man not to be tried except upon a regular and lawful accusation. It is an old principle, earlier than the great charter wrested by the barons from King John at the point of the sword: it is one of those rights which cling to human nature everywhere.

Again, I plead for a clergyman. I say that if any class of men, when charged with offenses before a civil or ecclesiastical tribunal, should have the benefit of all the laws which God and man have promulgated to protect against groundless impeachments, exaggerated charges, irregular, illegal, and lynching proceedings, it is this class of men—clergymen who have given up the world and its pursuits, and devoted themselves to the cure of souls and to the good of their fellow-men. At best, a clergyman makes but a poor figure in attempting to vindicate his rights in a court of law or in any other tribunal. In such a case, every intendment and construction is to be taken in favor of the person accused. I would not go so far as he did who said that—since a bishop should be blameless—it would be a sin to blame a bishop; but the presumption of integrity of intention, which, being established, dispels all crime, applies preëminently to a clergyman on trial, and particularly when on trial before an ecclesiastical court. We have had some examples of such courts which have treated these matters with dignity and justice, showing how a clergyman should be dealt with under such circumstances, and how the law should be administered.

The respondent is accused here either of conducting himself in New-Jersey in violation of the rules of his Church, and in a manner disgraceful to his office, or else he is accused of nothing. This presentment does accuse him of a violation of the rules of the Church; but the other part of the charge—that his conduct was disgraceful to his office—is left out, is left out *ex industria*, is left out because they had not the stomach to put it in; and without that, the charge is good for nothing. In short, they have made a charge here which is a nullity. It is not a charge for something done in this diocese, but for something done in the Diocese of New-Jersey; and when New-Jersey is in the case, it is for an offense under canon 3, section 1, that the offender must be arraigned, or not at all. There is really no ground for doubt upon this point. Bishop Odenheimer expected that Mr. Tyng would be presented and tried under canon 3, and Bishop Potter could have had no idea of starting a different accusation.

Our object in presenting this view to the Court now is this: We have waited until the whole of the case on the part of the presentors has been laid before the Court, and until we have seen that they do not even attempt to show that there was any thing disgraceful, scandalous, base, low, or mean about the conduct of the accused. In courts of law we talk about deciding questions according to the allegations and the proofs—*secundum allegata et probata*; but here is a case without either the necessary allegation or the necessary proof. It is a pretty lean case. (Laughter.) There is no proof to be spread over the allegation to cover it, and there is no allegation to be stretched out to meet the proof. Neither the allegation nor the proofs which would be essential to make this a good case have been produced.

The Court, then, will please understand us as claiming distinctly that we are entitled to be dismissed at this stage of the case, and without calling any evidence on our part, which might involve considerable time.

We think it is due to the Court, due to the accused, due to public justice, due to the diocese which you so dignifiedly represent, that we should make this application now; and let it be seen that there is no case here upon which to proceed further, and that therefore Mr. Tyng should be dismissed from further attendance upon this tribunal. (Applause.)

Mr. NASH. A very few words will be necessary in presenting the view of the presentors. It is not a new one, and therefore I can safely say that we are quite prepared to meet the point made upon the other side. I may say, at the outset, that I am glad that the gentleman is so strenuous for the observance of the canons in reference to

the rights of his client. That is all we are asking for in reference to the rights of the clergy generally, and I do not think it will be necessary, therefore, to enlarge upon any of those great principles of universal law, which my friend seems to be so fond of quoting and dilating upon. The case lies in a very narrow compass, and therefore I do not see the necessity of getting so warm about it; but my friends upon the other side seem to get themselves into a tangle, and then to get heated in trying to get out. (Laughter.) That is the only way I can account for their excessive warmth in discussing a mere question of canonical construction.

Now, the point of the counsel upon the other side is, that because canon 3, of title 2, in relation to clergymen in one diocese or missionary district chargeable with misdemeanor in another, provides that the ecclesiastical authority of the diocese where the offense is committed, when the clergyman does not belong to his diocese, may be required to proceed against him in certain cases where he has conducted himself contrary to the rules of the Church, and in a manner disgraceful to his office; therefore, the authorities of the diocese where the clergyman belongs, can not proceed against him except the case comes within the language of this canon 3. That is the fallacy that lies in the argument in the outset. It is a mistake committed, I will not say intentionally, but it is either a very ingenious mistake, or, if unintentional, it is probably from not having examined the canons carefully.

The general rule of ecclesiastical law is different from that of the civil law, in this, that a clergyman is not amenable primarily to the authorities of the place where the offense is committed, but to the authorities of the diocese where he canonically belongs. A very interesting case was up some time ago before the ecclesiastical courts of this diocese, involving this question, in one stage of which an appeal was made to the civil courts. A clergyman belonging to the Diocese of Connecticut was said to have been guilty of offenses there disgraceful to his office. Before those offenses were discovered, he succeeded in getting letters dimissory, removing to this diocese, and being accepted here as a clergyman in good standing. The facts having become known, complaint was made here, and the question was made whether, the canonical residence of the accused having been changed, and he having left Connecticut with letters dimissory, which affirmed his good standing in the Church, he was amenable here or not, and that raised a full discussion of the difference between the civil and the ecclesiastical laws upon these subjects. The jurisdiction of this diocese was sustained. Now, a clergyman, or any other person, committing an offense, triable by the civil law—I use the word "civil" as distinguished from "ecclesiastical," but I will

say criminal law, if you please—a person committing such an offense in Connecticut or New-Jersey, no matter whether he resides, when at home, in New-York or not, can not be tried in New-York; because it is a principle of the common law that a man must be tried in the locality where the offense is committed. But if a clergyman commits an offense against the law of his Church, he is amenable to the authorities of his diocese where he canonically belongs. I need only refer to section 1 of this same title to state a proposition that is entirely familiar to the Court, but which my friends on the other side, seem to have forgotten.

"Every minister shall be amenable for offenses committed by him, [observe, not within the diocese, but *by him*, no matter where,] to the bishop, and if there be no bishop, to the clerical members of the Standing Committee of the diocese in which he is canonically resident at the time of the charge."

Now, then, under this canon, every minister of the Diocese of New-York, committing an offense for which he is liable to presentment, whether in New-Jersey, Wisconsin, or elsewhere, is liable, upon the facts being brought home to the authorities of the Diocese of New-York, to be called home, and tried here for that offense—here, and nowhere else, except under the express provision of this canon 3, which was passed for the first time in 1850, and which was for the purpose of meeting this very case which I have put. I agree with the counsel upon the other side, that if a clergyman belonging to the Diocese of New-York commits an offense in the Diocese of New-Jersey, for which he is liable for presentment and trial, and the authorities of New-Jersey complain to the authorities of New-York, and the authorities of New-York fail, or neglect, for three months to take any notice of the complaint, the authorities of New-Jersey can not try the offender for the offense except under canon 3. And that might have been this case. If the authorities of the Diocese of New-York had failed, for the space of three months, to take any notice of the complaint which came to them from the Diocese of New-Jersey, and the Bishop of New-Jersey, or any of his presbyters, had been desirous of presenting the accused for trial in New-Jersey, they could not have presented him for trial there unless they made out a case against him under this canon 3. Therefore, whether the offense charged here and proved would have been, under canon 3, an offense for which the Bishop of New-Jersey could have had this respondent tried, it is entirely unnecessary for this Court to decide.

Much has been said, and a great deal of warmth expended upon the epithet "disgraceful," contained in this canon, and it is said that the presentors, and none of the parties connected with this presentment, have dared to put into the charge a statement that the offense

was disgraceful to the office of the accused. Now, it is unnecessary for the counsel upon the other side to throw out aspersions of that kind for the purpose of affecting this Court, or affecting the public. Those who have been connected with the presentation of this case for judicial examination and decision, so far as I have been aware of any intent governing them, have not desired to make it more offensive than was needful. There has been no spirit of persecution, that I know of, enlisted against the accused, and, therefore it is not proper, it seems to me, to draw into this case, as the counsel seems to wish to do, themes which have no relevancy to it, but which are addressed *ad populum* rather than *ad clerum*.

I am not prepared to concede, however, that the offense charged in this case, that of intrusion on the parochial rights of a brother in the same ministry, is not, in the proper meaning of the term, an offense disgraceful to the office of the offender. It certainly is not *graceful* to his office. That will not be disputed. How far it is disgraceful depends, of course, upon the purpose and spirit with which the offense is committed. If it is casual or accidental, of course, no bad motive may be attributed to it; but if a clergyman in the Church, proud of his preaching talents, and given to excited preaching, wantonly intrudes upon the parochial cure of another minister of the same Church for the purpose of sapping the confidence of his people in that minister, I hold that such an act is disgraceful to the man and to his office. (Applause.) And I do not care how strong the definition given to the word by the counsel on the other side may be. But, as I said before, I do not consider it necessary for this tribunal now to determine that question. No charge is made by me, because I am speaking upon my responsibility in this case, as representing, perhaps, to some extent, the authorities of the Church in this diocese; no charge is made by me that such was the object and intent of this defendant. It is, however, for the other side, if they choose, to conduct this proceeding for the purpose of influencing popular feeling, rather than for the purpose of getting a fair and just construction of this canon, to invite crimination and recrimination. The object of putting in these proceedings had in New-Jersey was simply to show that the authorities of this diocese were not volunteers in this matter; to show that it came before them officially from the Bishop of the Diocese of New-Jersey; and that for them to have refused to take the proceedings provided for in the canon would have been to hand over this defendant to be tried in New-Jersey by a bishop a stranger to him, and by clergymen belonging to another jurisdiction, and that therefore it seemed to be the duty of the authorities of this diocese simply to take the canonical course which the regulations of the Church appointed. That was the object in putting in these New-Jersey proceedings.

But turn now, for a moment, from the General Canons of the Church to the Canons of our diocese; because, although the offense complained of here is a violation of the General Canons of the Church at large, yet the procedure of the authorities is under our own canons. I suppose it will be conceded here, because it is too plain to be denied, that three clergymen of the Diocese of New-York can make a valid presentment in such a case as this; and this presentment is made by three clergymen of this diocese.

It may be made by "the vestry of any church of which the accused is a minister, or by any three presbyters of this diocese entitled to seats in the convention;" or "whenever, from public rumor, or otherwise, the bishop shall have reason to believe that any clergyman is under the imputation of having been guilty of any offense or misconduct for which he is liable to be tried," he may appoint a committee of five, of whom three at least shall be presbyters, to examine the case, and who may, if they find sufficient ground, make a presentment. (Canon 17, of New-York.)

I suppose these words are broad enough to include every offense mentioned in the canon, immoralities as well as violations of the constituted canons of the Church. The authorities are to examine the case. That duty devolves, in the absence of the bishop, upon the Standing Committee of this diocese. Upon this charge, duly authenticated, as the papers show, the accused had been guilty of misconduct in the Diocese of New-Jersey, and of a violation of the canons, not of the Diocese of New-Jersey, but of the Church at large. In pursuance of the direction of this canon, a committee of five persons was appointed to examine the case. That committee of five did not choose to proceed upon one of the grounds contained in the complaint which came to them from New-Jersey. I am not authorized to say whether it was for lack of definite evidence as to the manner in which the services were conducted on the day in question, or from the exercise of their discretion, by the presentors; but, at any rate, they did not conclude to make the manner in which the services were conducted, or the use or disuse of the Book of Common Prayer a ground of presentment. And the Court can perhaps see how such an exercise of their discretion may have been a judicious one. The attendance upon these occasions of public worship, not held within the church or congregation of a settled Episcopal parish, is mostly upon the part of those who are not sufficiently familiar with the Prayer-Book to know how far its requirements have been, in spirit or letter, complied with or violated. And that may have had some influence upon the action of the presentors. But however that may be, they chose not to include that ground in the presentment. They have, therefore, presented the accused simply for an intrusion upon the

rights of a brother minister of the Church in the Diocese of New-Jersey. That is an offense which the counsel upon the other side concedes would be sufficient to make good the presentment, provided the facts had occurred in the Diocese of New-York instead of the Diocese of New-Jersey. If they had occurred in Westchester county or in Poughkeepsie, he concedes that the presentment is sufficient, and the proof is sufficient to establish the case. Now then, unless some different rule applies in New-Jersey, of course the presentment and proofs are sufficient in this case. But the rule is the same wherever the offense is committed. The only difference is this, that if the Bishop of New-York did not take up this matter for the space of three months after receiving this complaint, then canon 3 entitles the Bishop of New-Jersey to have the offender presented and tried. And that is all that canon 3 has to do with this case. This view of the canon, which is a legal one, based upon the construction of its provisions, and upon general principles of ecclesiastical law, as to the amenability to trial, makes it, of course, unnecessary for me to reply to the thousand allusions made by the counsel on the other side; because, when I show that a thing is irrelevant, that is enough of it for my case.

I am not afraid as to the permanent effect of this discussion. I do not deem it necessary to take up every gauntlet which is thrown down. I would consider it rather departing from the proprieties of the occasion to go into a wrangle here about things that might happen under other circumstances. Therefore, I do not propose to allude, further than to say that I shall make no further mention of them, to the things that have been said about the Seamen's Mission; about the liability of a clergyman, under the strict letter of the canon, failing to perform services on account of sickness; or about the duty of all courts and tribunals to protect the rights of persons accused. We do not dispute any of those things. We do not claim at the hands of this Court any thing more than a fair construction of this law. I am surprised at the sensitiveness of the defendant's counsel in this case, which they manifest as though there were danger that some great rule of civil right was about to be contravened and overthrown for the sake of punishing the accused. I do not think there is any danger of any such thing, and I should be very sorry to have any such thing occur. I am not arguing here for victory. I am not contending for the conviction of this defendant. I am simply stating to this Court the facts set out in the presentment, and it will be for the Court, after the termination of the whole proceeding, to say whether those facts constitute an offense for which this defendant was liable to be proceeded against by the authorities of this diocese.

I think that probably all the facts necessary to enable them to pass

an intelligent judgment upon that question are now before the Court. But the defendant's counsel have a right to furnish further evidence, such as they may deem relevant to a defense, if they have any. What it is, of course we can not now know. They have not put in any special answer either by way of denial of the facts alleged or by way of excuse or palliation. They have simply pleaded "not guilty." We do not know what the defense is, but I take it for granted that when a presentment is sent to a court for trial, which has been allowed by the ecclesiastical authorities of the diocese to constitute in its statements at least an offense, and when the facts alleged are satisfactorily proved to the Court, the Court will put the defendant upon his defense before they pass judgment upon the case. That is all we ask. We do not ask the Court to decide any thing at present, except that the facts set out in the presentment are sufficiently proved to satisfy the Court, and to throw upon the defendant the duty of furnishing any further testimony (if he has any further testimony) that is to be presented to the Court before they make a final disposition of the case.

Mr. FULLERTON. May it please the Court——

The CHAIRMAN. The hour for adjournment has arrived. Will you take long, Mr. Fullerton?

Mr. FULLERTON. No, sir; I propose to be very brief. But there is another subject which it becomes necessary for the Court to consider to-day.

[Mr. Fullerton here stated some reasons why the trial could not proceed to-morrow—prior engagements of counsel, chiefly—and then, at the request of the Court, proceeded to discuss the question of dismissal, as follows:]

There ought not to be, and I do not see how there can be, two opinions in respect to the question now under consideration; and if this case is considered fairly, as I hope it will be, under the canons to which attention has been called, it seems to me that this complaint must certainly be dismissed, for the reasons stated by my associate who opened this discussion. I shall not travel over the ground which he occupied, but I will present some additional considerations to strengthen and fortify his positions.

There is a marked analogy between the laws of the Church and its forms of government in this country and our civil forms of government. There is a General Convention of the Protestant Episcopal church, and there are Diocesan Conventions also. There are general laws, and there is a system of general legislation extending over the whole of the United States; and there is also a system of diocesan legislation, and there are certain powers reserved to the General Convention, which they exercise to the exclusion of the dioceses themselves.

The analogy so far is perfect.

The General Convention have legislated upon this subject, leaving the respective dioceses forming the great body of the Church in the United States also to legislate upon it, so far as they do not interfere with the legislation of the General Convention.

Now, the laws which pertain to a particular diocese may be likened to the laws which pertain to a particular State. There are laws of the general government, and there are laws of the State government. The general government have a right to give jurisdiction over any given territory that they see fit to name in an act of Congress. The State governments have no right to give jurisdiction beyond the limits of its own territory. For instance, if a thief goes from the State of New-York and commits a larceny in the State of New-Jersey, he can not be tried in New-York. If a burglar, who is a resident of the city of New-York, pursued his occupation in New-Brunswick, New-Jersey, he can not be tried here; he must be tried where the offense is committed, so far as State laws are concerned. That, my friend upon the other side will concede. And if there is any right to take him from the place where the offense was committed, into another jurisdiction, and submit him to the local laws of that jurisdiction, it must be in consequence of some positive law or enactment upon that subject, giving that right or authority. My friend will concede that also.

Now, from a perusal of these canons, we learn that the Church has adopted the common law rules for the regulation of trials of this character. It is a compliment that the common law well deserves at the hands of the Church, and they have done wisely in adopting those rules, because they are the embodiment of the grandest uninspired learning and wisdom of men.

What does the common law teach upon this subject? Just what I have said. It never permits a man to be dragged out of the jurisdiction within which he commits an offense to be tried for it and punished in another jurisdiction.

Well, where was this alleged offense committed? Not within the State of New-York, not within the jurisdiction of this diocese. It was committed outside the territory of New-York, and in the territory and Diocese of New-Jersey. What is the legislation of the Church in regard to such an offense?—if it be an offense. The Diocese of New-York has no right to legislate upon the subject, but the General Convention have a right to legislate upon it; and that is the parallel between the Congress of the United States and the General Convention of the Protestant Episcopal Church in this country. Congress has a right to say that an individual committing an offense

in New-Jersey, if the nature of the offense committed brings it within the province of the general government, shall be tried in the State of New-York. So the General Convention of the Church have said, in canon 3, that, where an offense is committed outside of the territory of New-York, without the limits of this diocese, the offender may be subjected to trial and punishment here; and I call the attention of the Court now again, in furtherance of what my associate has said, to the fact that it is not only conceded that whatever was done by the respondent in this case, was done outside of this diocese, but that it has been certified by the ecclesiastical authorities of this diocese, under and in virtue of the provisions of canon 3. If he is to be convicted, he is to be convicted under canon 3.

Now, what is canon 3? We must ascertain that. We are not to try this gentleman at large. We are not to try him upon any charge that may have its rise within the walls of this room or within the boundaries of the State, or within the contracted notions of individual men. We are to try him for an offense against this canon; and now let us see what the offense is, just as we would look into an indictment for a criminal offense, to see what the crime charged was. And this is important, because this Court know perfectly well that, if a man is indicted for stealing the horse of A B, and it turns out that the horse belongs to C D, public justice throws the door of the court-room wide open, and tells him he may go free, because he can not be convicted on such an indictment. There must be in the indictment a description of the property stolen—in a word, the offense must be defined according to the letter of the law. Why? Not because the law is lax in dealing with criminals, not because it is imperfect, but because it is humane, because it will not subject an individual to trial for a crime that is not distinctly charged against him. It makes no difference who the accused is, how high he may be, or how low he may be, the same rule obtains and applies; because it is the glory of the common law that, whilst no man is so high as to be beyond its reach, no man is so low as to be beyond its protection; and if you take an individual from the gutter, the poorest, the most miserable, the most abject of the human family, and put him upon trial in a civil court, and it turns out that there is a discrepancy between the allegation and the proof, he is at once discharged, for the reason that the law will not try a man upon such an indictment, and will not permit him to be twice placed in jeopardy for the same offense.

Now, I ask this Court, in the discharge of the solemn duty incumbent upon it, because it is a solemn one, it affects not only the individual whom I represent, but the whole body of the Church, and I may be permitted to say, without giving offense to my friend upon

the other side, that it affects the estimation in which that Church shall be held by the community at large; and we should have a care for that, because it is my object and yours, and his, I trust, to commend that Church to the confidence and conviction of the world; I ask this Court to consider the application of these principles to this case.

What is the law? This offense is certified by the Bishop of New-Jersey. What right has he to certify it? A perfect right, under canon 3. What offenses has he a right to certify? Canon 3 will instruct us.

"If a clergyman in this Church belonging to any diocese or missionary district shall in any diocese or missionary district conduct himself in such a way as is contrary to the rules of this Church, *and* disgraceful to his office——"

The offense, then, must not only be against the rules of the Church, but also disgraceful to his office, in order to authorize the Bishop of New-Jersey to certify the offense to the ecclesiastical authorities of New-York; otherwise this Court is just as much without jurisdiction as they would be if they had assumed to try an individual for an offense against the common law of the land. Now, we are amenable for what we do in New-Jersey. I do not claim that any one connected with the Church can do what he pleases in New-Jersey with impunity; but I do say that, when the offense is committed outside the jurisdiction of this diocese, there is but one way to try the offender if he belongs to this diocese, and that is under canon 3. It becomes the duty of the ecclesiastical authorities of New-Jersey to certify that offense to the bishop, and then the bishop is to take notice of it, and the offender is to be presented for trial. The offense, if offense it be, was perpetrated in New-Jersey; it was certified to the ecclesiastical authorities of this diocese under canon 3, by the Bishop of New-Jersey; the respondent is put upon trial under certificate from the Bishop of New-Jersey; and now behold, when we come to compare the indictment with the original charge, we find the play of *Hamlet* with Hamlet left out. (Applause.) Where is it charged that this alleged offense of Mr. Tyng's was *disgraceful to his office?* It is nowhere; the charge is not to be found. But they do charge in the presentment that his conduct was contrary to the rules of the Church. My answer to that proposition is this. The learned counsel upon the other side, with all his astuteness and coolness, has failed to show to this Court any such conduct on the part of my client. The counsel seems to claim great credit for his own coolness, and to reproach us for our want of it; but perhaps the fact that he is merely acting here as a district-attorney, while we stand between a clergyman and the condemnation of the Church to which he belongs, may be an explanation of his coolness and an apology for our

warmth. (Applause.) The learned counsel, I say, with all his astuteness, and coolness, and industry, has failed to find any conduct of Mr. Tyng's such as is described in this presentment—conduct against the rules of the Church, and for which he may be tried under canon 3.

I close as I commenced. I do not see how there can be — there ought not to be—two opinions upon this subject, and I, with these observations, leave it for the determination of the Court, hoping that their decision will conduce to the harmony of the Church and be satisfactory to those individuals who claim that such a great offense has been committed in New-Jersey. (Applause.)

The CHAIRMAN. The motion was to dismiss this case, I believe.

Mr. TRACY. Yes, sir.

The CHAIRMAN. The Court are unanimous against dismissing it.

After some consultation between the counsel on both sides and the Court, the Court adjourned until Friday morning, February 14th, with the understanding that on that day the trial should be concluded, if possible.

FRIDAY, February 14, 1868.

The Court met at ten A.M., and was opened with prayer by the Chairman, Rev. Dr. Beach.

The CHAIRMAN. We have received a telegram from Rev. Mr. Draper (the Clerk of the Court) saying that he is unwell and unable to be here to-day. Therefore, if there is no objection, the Rev. Mr. Farrington will act as clerk until three o'clock.

Mr. FULLERTON. We are waiting the pleasure of the Court.

The CHAIRMAN. We are ready to go on.

Rev. OTIS HENRY TIFFANY called; examined by Mr. TRACY.

Q. Please state your name, place of residence and profession?

A. Otis Henry Tiffany; New-Brunswick, New-Jersey; Doctor of Divinity; pastor of the St. James's Methodist Episcopal church.

Q. What connection had you with St. James's Methodist Episcopal church in July, 1867?

A. At the request of the authorities of the church, I supplied the pulpit during several Sundays in that month; the invitation was to supply it for the entire month.

Q. You speak of the authorities of the church. Will you state whether the property of that church is vested in the Conference in

the usual manner, or is held otherwise; and if so held, how and by whom?

A. The title to the property is not vested in the Conference, as required by the discipline of the Methodist Episcopal Church, but is vested in a board of trustees; two of the board of trustees being members of the Methodist Episcopal Church, two of them not members of any church, and the fifth—the president of the board—being a parishioner of the church of which the Rev. Stephen H. Tyng, Jr., is rector.

Q. (By Mr. NASH.) In New-York?

A. In New-York City; he residing in New-York during the winter, and in New-Brunswick during the summer. I suppose it is in New-York—commonly said so to be.

Q. Were you present at St. James's Methodist Episcopal church on the Sunday when the Rev. Stephen H. Tyng officiated in it?

A. I was, at the hour for morning service.

Q. On whose invitation or request did he occupy the church that day?

A. At the request of personal friends and members of his parish. The Court will understand that there was no proper person or pastor in charge of that church at that time. I will amend that answer by saying that no invitation was extended by the authorities of the church as such.

Q. Were those persons mentioned by you as friends of Mr. Tyng, parishioners of Mr. Tyng in New-York, temporarily staying at New-Brunswick?

Mr. NASH. If Dr. Tiffany can speak of his personal knowledge, I will make no objection; but I would rather not have any more hearsay on the subject.

The WITNESS. Then I will have to ask you a question or two. (Laughter.)

Mr. NASH. I am not asking you a question, doctor; I am only making a suggestion.

Mr. TRACY. The doctor will give us such knowledge as he possesses.

A. They told me that they were parishioners of Mr. Tyng; that is as near as I can come to personal knowledge; some of them were resident during the summer months in New-Brunswick, others of them temporarily residents and casual visitors. Does that come to the point? (Laughter.)

Mr. TRACY. Perfectly so. How large a number was there of such persons?

A. I can not pretend to say with exactness. I was introduced to some ten, or a dozen, or fifteen of such persons; but whether they

were more or less in number, I can not state. There was a number of ladies and gentlemen to whom I was personally introduced by Mr. Tyng there after the service—somewhere about ten or fifteen persons.

Q. Were those persons attendants at St. James's church on other occasions than the one when Mr. Tyng occupied it?

A. Some of them attended regularly while in New-Brunswick. Others of them I have not seen, to know them, except upon that occasion. You see we have by far the finest and handsomest church in the place, and I can not tell whether the same persons go there one Sunday after another or not; but I know that some of the persons to whom I was introduced on that occasion I have seen there since.

Q. In the summer season has that church ordinarily a large attendance?

A. Do you mean by that to draw a distinction between summer and winter?

Q. I only speak of the summer, because that is the time that has reference to our case.

A. During the month of July last, the church was full whenever it was opened for service. I speak of that month because I was not present there before that.

Q. On the Sunday when Mr. Tyng occupied the church, what arrangement was made as to the persons who should officiate and preach?

A. Shall I give you the whole history of the arrangement as I know it?

Q. Yes, sir.

A. I reached New-Brunswick on Saturday afternoon, the 13th, coming, as I before mentioned, to supply the pulpit during the month. On reaching New-Brunswick, I was informed, by an officer of the church, of Mr. Tyng's presence in the city, with the expectation of officiating and preaching in St. James's church the next day. I was informed by the same person that Mr. Tyng had been invited earlier in the season, and a day fixed for his coming; but being unable to be present then, had come out to spend a few days of his vacation with his parishioners at their summer residence; and that they would be gratified to have him officiate and preach the next day. Learning these facts, I called upon Mr. Tyng at the residence of Mr. Christopher Meyer, and, so far as I had any authority, tendered him the use of the church, next day, to hold such service as he might please. Mr. Tyng, learning that I had come from Chicago for this purpose, was at first unwilling to use the entire day, but the arrangement was finally made that he should do so.

Mr. TRACY. Without putting another question, I would like the witness to state the time of day when he called upon Mr. Tyng?

A. My call on him was after tea, in the early part of the evening.

Q. (By the Court.) You had come there for the purpose of officiating?

A. Yes, sir, for the purpose of officiating during the month of July. I had consented to become the pastor of the church as soon as I could leave the church that I was then serving, and having a vacation, I agreed to come on and supply the pulpit for that month.

Q. Did you attend on that Sunday morning during the services and preaching at St. James's church?

A. I did.

Q. What part of that edifice did Mr. Tyng occupy? Will you briefly describe it, and the interior of the church?

A. He entered by the door in the rear, and to the right of the altar, which takes the place there of what is the communion-table in the Protestant Episcopal Church.

The CLERK. Do you want that down?

Mr. TRACY. Certainly. There is no altar in the Anglican Church: the Court of Arches has recently decided that it is unlawful to erect one. (Laughter.)

A. (Continued.) He passed to the right of the altar and proceeded to the place where prayer is appointed to be said. I am using these terms "right and left" as things would appear to the congregation. Do you want to know what he did then?

Q. The description of the place is what we want.

A. Well, after making his private devotions there, he conducted the service from that point, up to the time for the reading of the Scriptures, which he read—reading the morning lessons appointed by the Protestant Episcopal Church for that day, from the reading-desk which is in front and to the left of the altar. This altar, and prayer-desk, and reading-desk are within the chancel, and separated from the congregation by the communion-rail. I mention this because you have asked me for something by way of description.

Q. Please describe still further where did he preach his sermon?

A. In preaching (if it was preaching) he stood at, near, or by the reading-desk.

Q. Are you acquainted with the service of the Protestant Episcopal Church, and are any of your intimacies in that Church?

A. I am. I have a brother who is a priest in that denomination. I have myself been invited to take orders in that Church. (Laughter.)

Q. What do you say of the services of that morning by Mr.

Tyng, as to whether or not they were those of the Protestant Episcopal Church?

A. They were such as I have been in the habit of attending in the Protestant Episcopal Church, so far as circumstances would allow. I say such as I have been in the habit of attending, because I have not possessed myself of the latest editions of the service. (Laughter.)

Q. Will you proceed now, if you can, from your recollection without any further question, and indicate any deviations which circumstances seemed to call for?

A. The deviations I have referred to were, first, that the congregation were not provided with Prayer-Books, and on this account the reading of the Psalter, as directed to be used in the Prayer-Book, was omitted, and the selection of psalms, called the Sabbath Psalter, which we find in the church, were submitted in its place. Mr. Tyng read prayers from a copy of the Prayer-Book which I handed to him. Do you want any thing more on that point?

Q. Does any thing more occur to you?

A. He went through with the general range of prayers, commencing with the general confession, passing through the collects of the day—the collects for "grace" and for "peace," and for the rulers of the Church, and concluded with a general thanksgiving. He made the Absolution, not as a gentleman testified the other day, mingling it up with the Lord's Prayer, but putting it in the right place. He went through the usual services as appointed in the Prayer-Book to be used by ministers of that Church. I mention this because I saw in a newspaper that somebody had said that he got things all higgledy-piggledy. So far as I recollect, and I think I should have noticed if he had not—for I watched him pretty closely—he went through with the services in the regular way. I may mention that there were two points in which there was a divergence from the usual order that I have seen followed in the Protestant Episcopal Church, though it is not required, I think, by the letter of the law. In that Church every minister has certain apparel with which he goes into the pulpit; but there was no special dress provided for Mr. Tyng on that occasion. He wore no surplice, but a bob-tailed coat, and we had a little talk afterward as to whether that was being "decently habited," as the law required. (Laughter.)

Q. Did you attend divine service there in the evening?

A. I did not.

CROSS-EXAMINATION BY MR. NASH.

Q. How long have you been in orders in the Methodist Church?

A. In March, 1848, I was ordained deacon; in March, 1850, I was

ordained elder or presbyter; the one order being given in Maryland, and the other in Virginia.

Q. Did you ever visit this church of St. James in New-Brunswick before that time?

A. I had done so on one Sunday.

Q. In the previous season?

A. It was on the first Sunday in May of the same year—the last of April or first of May, in the spring.

Q. When did you become the settled pastor of that church?

A. On the 4th of October, 1867.

Q. Had the arrangement been made that you should become the pastor when you came there in July?

A. Yes, sir.

Q. Is that church not connected with the Conference in any different manner than is usual with Methodist churches?

A. Put it Methodist Episcopal Church; there are no such things as Methodist churches. (Laughter.)

Q. Very well.

A. Yes, sir, there is a difference in the deed giving title to the property.

Q. Is that the only difference?

A. The particular point is the renouncing by that deed of the appointment of a minister—a vital point in the government of the church—by which a minister can not be forced on that congregation against their will.

Q. No minister, then, can be forced upon that congregation without their consent?

A. Well, it would be presuming a great deal for me to interpret that order of the church in that way, and yet that is the practical effect of it. I would say that the difference is, that the provision of the discipline for the recognition of the ministerial appointments of the church is not named in the deed, as required in the Methodist Episcopal Church.

Q. But for the invitation which had been given to Mr. Tyng, would not you have officiated that Sunday at both services?

A. I presume I should; I was asked for that purpose.

Q. When you called on Mr. Tyng on that Saturday evening, did he inform you that any objection had been made by the ministers of his own church to his officiating in St. James's?

A. He informed me that he had received a letter from a Mr. Stubbs, who, he said, was rector of one of the Episcopal churches in New-Brunswick, objecting to his preaching in a "Methodist meeting-house." I told him in effect——

Mr. NASH. Never mind that.

The WITNESS. Excuse me.

Q. Was it necessary for Mr. Tyng to disregard that objection in order to insure the preaching of the Gospel in that house of worship on that Sunday?

A. I can not answer that question. In the first place, I do not know whether that was an objection; I think that is the question which you are here to try. I can not say in my answer that it was or was not.

Q. I do not think you understand the point of the question—at least, not as I intended it. Was it necessary for him to disregard that objection in order to insure that the Gospel should be preached in that house of worship on that Sunday?

Mr. FULLERTON. In effect that is proved already, because the witness says that he would have preached himself.

A. Well, I would have officiated in the morning; but, you see, between the time when I would have preached in the morning and the time when I should have preached in the evening I was taken sick, and I could not have done it in the evening. I did not hold that to be an objection to his preaching in that church, because there is no such place as Mr. Stubbs objected to his preaching in in the city of New-Brunswick. (Laughter and applause.)

The CHAIRMAN. If Dr. Tiffany will answer the questions put to him without arguing them, and if the audience will please to remember where we are and what we are about, it will be in better taste.

The WITNESS. I can not answer the question, because it would be admitting questions which I am not prepared to solve.

Q. This edifice, this church of St. James, is a fine building architecturally, is it not?

A. Yes, sir; said to be the finest in the State; I do not know that it is, but it is said to be.

Q. Of what style of architecture?

A. Norman-Gothic.

Q. With stained glass windows?

A. Painted glass windows.

Q. A brick or stone building?

A. Brick.

Q. These persons to whom you were introduced as members of Mr. Tyng's congregation in New-York, how many of them were of Mr. Meyer's family?

A. Four or five, perhaps.

Q. Can you give the names of any of them?

A. I think I can not.

Q. I believe you stated in your direct testimony that this Mr. Meyer was the President of the Board of Trustees of that church?

A. I do not know whether I did or not, but he is.

Q. As I understand your statement, that invitation to you was for the whole month of July, and was from the authorities of the church, while Mr. Tyng's invitation was from individuals—is that correct?

A. You want to draw the distinction between my invitation being official and his not so. That is so; my invitation was official, and his was not, in that sense.

Q. And but for the courtesy of each other would there not have been some difficulty in determining how both the invitations could be acted upon on that occasion?

A. I have no doubt that I could have inhibited Mr. Tyng from officiating on that day.

Q. Is there any regulation of the Methodist Episcopal Church against one presbyter intruding upon the charge of another presbyter of the same Church? If so, please make a reference to it.

Mr. FULLERTON. It seems to me that that inquiry is out of place.

Mr. NASH. Do you object?

Mr. FULLERTON. We have no objection to it except the waste of time.

A. I can not refer to any specific order upon the subject. It is expected that every man will attend to his own business, but there is no specific regulation about it.

Q. Are you familiar with a case of discipline in the Genesee Conference, of the Rev. Mr. Stiles, then stationed at Albion, on a charge of that character?

A. I am not.

Q. Were you acquainted in July, 1867, with the Rev. Dr. John McClintock, of the Methodist Episcopal Church?

A. Yes, sir; I have been intimately acquainted with him from my boyhood.

Q. Had he any, and if so, what connection with that church of St. James in New-Brunswick?

A. His family were members of the church, and he had officiated for them when able to do so at the hour of morning service; I think for a year, or perhaps part of a year previous—for some months—I don't just remember the exact time. He resided within a few miles of the place.

Q. Is his not a higher office than that of presbyter?

A. No, sir.

Q. Do you know his handwriting?

A. Yes, sir.

Q. Is that [exhibiting a paper to witness] his handwriting?

A. Yes, sir.

Mr. TRACY. We object to the admission of that paper.

Mr. PARKER. If Dr. Tiffany says so, we admit the handwriting on both sides of the paper.

The WITNESS. I don't know that; I spoke of only one side.

Mr. NASH. I offer in evidence a letter from Dr. John McClintock, dated New-Brunswick, June 10th, 1867, addressed to Bishop Odenheimer, in relation to supplying St. James's Methodist Episcopal church——

Mr. PARKER. You can state the date, signature, and address of the letter, and that is sufficient.

Mr. NASH. I have a right to make the offer in this form.

Mr. TRACY. The counsel has no right, if the Court please, to state the contents of the paper by saying, "I offer a letter which contains so and so." The definition of a document is complete when the date, signature, and address are given. He can offer the letter to the Court to be inspected, but he is not entitled to have in the minutes of the Court any thing more than a mere external description of the document.

Mr. NASH. The Court can not know whether the letter is admissible or not, unless they know the substance of it.

Mr. TRACY. They are entitled to see the letter.

Mr. NASH. But that is not enough. The record is to go before the bishop of the diocese, and it is proper for him to know what the letter is that is offered.

Mr. TRACY. If the Court see fit to reject this letter, a copy of it can be filed with the Court, and the bishop can see that copy.

Mr. NASH. I shall not state the contents of the letter any further than I consider them relevant to this case.

Mr. PARKER. Would you have a right to introduce any letter written by Dr. McClintock to Bishop Odenheimer?

Mr. NASH. I think I should have a right to offer a letter, if it were relevant to the case.

Mr. TRACY. The question of relevancy we can argue whenever the gentleman chooses; but if it were merely marked A, or some other letter, that would be sufficient to identify it. The matter of relevancy is not a matter for the scribe of the Court to record.

Mr. NASH. I insist upon my right to state fairly what I offer to prove. That was allowed the other day.

Mr. TRACY. That was, you offered to prove a thing by a witness.

Mr. NASH. What I offered to prove by a witness or by a letter. What I offer to prove now is, that the services in St. James's church by Mr. Tyng were a matter of correspondence between Dr. McClintock and Bishop Odenheimer. If the Court allow that, then I shall offer the letter itself to prove what the correspondence was.

Mr. PARKER. I respectfully object to any thing going upon this

record which states formally the fact that a letter written by any body except the witness on the stand contains certain things. I object to this evidence, to its relevancy and to its admission, on every rule governing the admission of evidence. The counsel offers a letter. He can not prove a letter. The rules of law are extremely well settled about that, and they are merely the dictates of common-sense. Evidence is by witnesses, or by writings which are judicial in their nature. Letters from individuals, outsiders, are never admissible, no matter what they relate to. They may be put in evidence when a witness is on the stand, by saying to him, "Did you write this letter?" and so proving what he wrote as you would prove what he had said in contradiction of his oath. But to prove a fact by what some outsider has written, be it the Bishop of New-Jersey, Dr. McClintock, or any body else, is not admissible; and I am sure my learned friend can find nothing in any law book which will justify that. There are certain things detailed in that letter. What are they? They are facts. How are they to be made manifest? Why, by proof. Is a letter proof? I submit, with great deference to my learned friend, that he is not entitled to have any record made of a substantive offer of this kind; because it is an attempt to prove something which the Court can not possibly hear in that way.

Mr. NASH. I must confess that I am a little surprised at the positions of my friends on the other side. I have allowed them to prove here without objection that Mr. Tyng's invitation to preach in St. James's church came from one of his parishioners, as having some bearing upon the animus in this case. I have allowed them to prove the courtesies that passed between the witness on the stand and Mr. Tyng, because I considered that evidence relevant to a fair history of this transaction. I now offer to prove that the topic of supplying St. James's church with the services of a presbyter of the Protestant Episcopal Church during that summer had been the subject of correspondence between Dr. McClintock, an eminent divine of the Methodist Episcopal Church, and Bishop Odenheimer, prior to that time, as having precisely the same relevancy to this case, and the same bearing upon its history. If they object to it, I have not the slightest objection to the Court's making such a ruling as they deemed proper on the subject. We have no feeling whatever in the matter; but I did not expect to see the case tried so technically as the defense seem disposed to try it.

Mr. PARKER. I think my learned friend has misapprehended why the evidence that we offered as to the way and manner in which Mr. Tyng went to that church and officiated was relevant. I take this Court to stand in a different position from most other courts, inasmuch as they are both the judges and the jury. You (the Court)

settle the facts, you settle the law, and, if I understand the canon, you likewise settle the punishment. If I am wrong in that, I should like to be corrected. Do you not suggest the mode of punishment?

The CHAIRMAN. *Suggest* and *settle* are two very different things.

Mr. PARKER. Well, you report your judgment of what it should be, and it is for the bishop to determine it finally. Now, there are differences and degrees in guilt, (if we must use that word in reference to this matter,) and it is for the Court to be informed of all the circumstances touching the transaction, in order to know what degree of blame to affix to the particular act charged. Therefore, how a man came to officiate is relevant to one of the issues here. It was in that point of view that I at once acceded to the idea of offering that testimony; and it was probably in the same point of view that my learned friend failed to object to it. But how is this relevant? Does this evidence have any thing to do with Mr. Tyng? Does it propose to show that he knew that these clergymen had been engaged in this negotiation? I have heard no such offer. Suppose Dr. McClintock and Bishop Odenheimer had a conversation on this subject, does it make a hair of Mr. Tyng's head white or black? Certainly the counsel can not show that these clergymen had this correspondence by such evidence as he now offers, instead of bringing witnesses here to depose that they had such correspondence.

The CHAIRMAN, (after consultation with the other members of the Court.) We will not admit the letter.

Q. Can you recollect whether, on the Sunday in question, Mr. Tyng used what is known in the Protestant Episcopal Church as the Ante-Communion Service that morning after the Morning Prayer was ended?

A. My impression is, that he did not. My recollection is, that he did not.

Q. Do you recollect whether he used the Litany?

A. He did not.

Q. Can you state whether he used the Absolution, pronouncing it standing, or whether he remained kneeling, and changed it into the form of a supplication?

A. I remember that he used one of the forms of Absolution; but as I was kneeling with my back to him, I can't say whether he stood or knelt.

Q. You have not answered in reference to the change of the programme?

A. My recollection is not distinct on that point.

525727

RE-DIRECT EXAMINATION BY MR. TRACY.

Q. When Mr. Tyng told you that he had received that letter from Dr. Stubbs, did he make any further remark to you on the subject of his right or duty in such a case; and if so, what did he say?

Mr. NASH. That I object to.

Mr. TRACY. What is the objection? You put in part of the conversation, and we propose to put in the rest.

Mr. NASH. I put in the fact that Mr. Tyng, at that time, had received this letter from Dr. Stubbs.

Mr. PARKER. Oh! no; you proved what he said.

Mr. NASH. I do not think it is proper for the accused to make testimony for himself by his own statements.

Mr. TRACY. We will refer to the record to see what the gentleman did prove on that subject.

Mr. NASH. I withdraw the objection.

A. We had some conversation on the subject. I remember one of his remarks, to the effect that the canon to which Dr. Stubbs referred was differently interpreted.

Q. Did Mr. Tyng state to you, and if so, can you recollect what he said, what his interpretation of the canon was?

A. Mr. Tyng gave me an account of the history of the canon—what purported to be the history of it; and I understood his interpretation to be about this, (I don't like to say as to the exact language, but I can state the substance of what he said, and I recollect it because I remember with great distinctness what I said to him in reply,) that the canon was intended or designed to prevent the intrusion of unauthorized or unacceptable ministers into Protestant Episcopal churches—in other words, that it was a law to regulate preaching in Protestant Episcopal churches, and not elsewhere.

Q. Did Mr. Tyng, in that conversation, give you his view of another canon, or part of a canon, forbidding one clergyman of his Church, under certain circumstances, to officiate within the parish or cure of another clergyman of his Church; and if so, state what you recollect that he said?

A. I think he did, and that he told me in effect that the location of Protestant Episcopal churches in New-York was such, that any minister officiating in his own church might be constructively guilty of officiating within several other parishes at the same time and by the same service. That is my general impression of what he said, though I can not speak as to the exact language.

Rev. Dr. MUHLENBERG called; examined by Mr. TRACY.

Q. How long have you been a minister of the Protestant Episco-

pal Church, and in what parts of the country have you exercised your ministry?

Mr. NASH. I object to that question. The Court has already intimated its own understanding of what I suppose can not be in dispute here—that the charge in this case, as contained in the presentment, is not for officiating in the church of another denomination, or particularly in any one place, except that the place where the services complained of were held was within the parochial cure of another clergyman. That is the charge, and I do not myself want to have the case travel away from what I suppose to be the legitimate question to be examined and to be determined by the Court when it comes to make its decision. Now, of course, I can anticipate the construction which is claimed by the counsel for the accused, that whenever in the parochial cure, as defined by the canon, of any clergyman of the Protestant Episcopal Church, another denomination of Christians, in the exercise of their civil and religious rights, form another congregation, that act carves out as it were a portion of the jurisdiction of that minister of the Protestant Episcopal Church as between himself and every other minister. That, undoubtedly, is an argument that will be made, but it is an argument purely legal and based upon a construction of the canon. If it is a correct argument, it needs no evidence to support it. If it is an incorrect argument, no evidence will help it. It is not a question of the usage of the Church, it is a question of law, a question of the meaning of the canon; and because some clergymen have one view and other clergymen another view of it, that very fact of the difference of opinions about it is a reason why the authorities of the Church should examine and settle the law itself.

Mr. TRACY. May it please the Court, in asking a question of this sort, I had reference to a rule which would have been violated if I had included every thing I designed to prove by the witness under one question. There are two questions that we desire to ask him. The present one is, what (so far as he knows) is the usage of clergymen of this Church as to exercising their ministry in churches of other denominations for the congregations thereof or in other public places. When the witness should have answered that question, I would be entitled to ask him further, what different usage (if any) there was in case there was an Episcopal church in the vicinity of that other church—in the same village or town. I do not put the two questions in one, because they are properly distinct. We propose to prove here, by Dr. Muhlenberg, and possibly by some other gentlemen of large experience and high standing in the whole body of the Church, the universally accepted usage—that occasionally a minister of that Church——

Mr. NASH. I must object to your putting on record that offer in that way.

Mr. TRACY. I am not making an offer, but an argument. I am not saying any thing to be entered by the Clerk, but making an argument for the Court to listen to and appreciate. We intend to show that there is a general accepted usage among the clergy of the Protestant Episcopal Church which allows them on occasions to officiate in the churches of other denominations, or in such other public places as may be open for them; and then to follow that up by showing that the consent of the rector or incumbent of the parish is not necessary, and that even though his parish limits run entirely around the place to be occupied, it makes no difference. Now, my friend meets this upon the general ground, as I understand him, that no evidence of any usage whatever, that no evidence of the expression of the common opinion of the clergy by action, (which is the best mode of expressing that common opinion, because they can not all *speak* at once,) that no such evidence is admissible on the determination of the legal question. If we were in a court of law, nothing would be plainer than our right to appeal to the common judgment of men as indicated by their common action when seeking the meaning of a statute; because the common action of persons who have to act under a statute, and do so constantly, and who are presumed to act sincerely and conscientiously, shows how the statute is understood, and is evidence of what the statute means. The intent of a statute is to be learned not only by reading its text and treating it grammatically, but also by going back to the time when the statute was made and inquiring why and for what purpose it was made and designed, and also by consulting the common usage of men living and acting under the statute and intending to obey it from the time of its enactment down to the time of the inquiry into its meaning. My Lord Coke gives this rule of interpretation: "*Optimus legum interpres consuetudo.*" Custom, then, is not only one of the means of interpretation, but it is the best of them. Coke, in commenting upon Littleton, enunciates the matter more largely: "It is common opinion, and *communis opinio* is of good authority in law. *A communi observantia non est recedendum,*" which, translated into the vernacular of the street, means, From the common custom of observing or treating a thing there is no going back.

A question arose in the House of Lords, under a certain act of Parliament affecting conveyances, as to what the statute meant; and Lord Chancellor Hardwicke said it was to be determined in such a case by considering the general usages of men upon the statute. My learned friend says that has nothing to do with the interpretation of a written law. Lord Hardwicke thought it had. (Laughter.) Both

Lord Hardwicke and Lord Mansfield said the meaning of an act of Parliament was to be determined by considering the usage upon the statute; and they went on to say that there was a class of gentlemen in England who drew deeds and conveyances, persons of observation and learning, accustomed to drawing deeds, and settlements, and securities; and as this was a statute affecting the titles to lands, the usage of such conveyancers was admitted to be considered as a part of the means of interpreting the statute itself. "Consider the usages of mankind upon the statutes," says Lord Hardwicke, and then he goes on to say that the opinions of conveyancers in all times, and their constant practice, is of great weight—not that it was absolutely to control, but that it was of great weight.

These things are to be found not only in Coke and Littleton and in the Reports, and books of that class, but even in so modern a book as a New-York lawyer's treatise upon statutes—Smith's Commentaries—in which this principle is recognized, and the author states that the popular practice before, and under, and after a statute, is admissible evidence as to the meaning of the statute. If we go to Webster, or Worcester, or Richardson, for the meaning of a word, what do we find? The meaning and acceptation of the word by mankind generally, as far as he has been able to get at it. It is precisely in that way that we determine the meaning of the language of a statute. We have here a written law coming to us from the General Convention of the Protestant Episcopal Church, prescribing a rule of duty and a rule of procedure, and the question is, what does it mean? Mr. Tyng has his view of the meaning, and others have their views, different from his; and it may be necessary for this Court to pronounce what they think is the true meaning of it; and in arriving at that, it becomes the duty of the Court to admit and consider such evidence upon the subject as would be recognized for the same purpose in a court of law.

Upon this line of authority it is entirely clear that we may put in the usage of the clergy who are subject to this canon. It is not for me at this moment to go into details in this matter, but simply to speak of our right to prove usage at all. But I ask this learned Court if such a thing was ever heard of before—a man accused of an offense and yet not allowed to show that in the action complained of he had done exactly what those whom he had been brought up to reverence had always done before; not be allowed to show the general opinion and usage of the Church, advising him of the meaning and intent of its laws? Is it to be said that the young men in the ministry are not to regard the hoary-headed men who preceded them, but are to mark out new paths for themselves, saying, "We are responsible to nobody"?

I submit, too, that, in view of the question that may possibly arise as to how much punishment should be inflicted upon Mr. Tyng for the alleged offense in New-Jersey, this evidence is proper and admissible.

Mr. NASH. I have only a word to say in regard to the very learned argument of my friend upon the other side, fringed with quotations from the learning of ancient times—so learned, indeed, that I do not think it has any application to this case.

Now, the rule of interpretation is simply this, that when a law is so ancient that its terms have to some extent become obscure, the cotemporaneous interpretation of it by those who are governed by the law and their action under it is evidence to later times of its meaning and of the intention of its framers.

An illustration of this, which is probably more familiar to most people than those which date back to my friend's youth, is the case of an attempt by the judges of the Supreme Court of the United States to find out what the word "citizen" meant in the Constitution. The question came up seventy or eighty years after the framing of the Constitution, and the point to be determined was whether the word "citizen" applied to persons of African descent. What I call usage was resorted to, and the understanding of persons living at the time, for the purpose of finding out in what sense the framers of the Constitution used that word. And such a mode of investigation was undoubtedly proper in that case.

But here is a canon which was passed originally in 1792, amended in 1795, enlarged in 1808 and again in 1829, taking substantially its present form, I believe, in 1832; and I think there is not a single word in it that is not a word now in common use and perfectly understood by all who are familiar with the English language. The object of the other side is to show now that certain clergymen have all along insisted that they would not be bound by this canon—as an argument for asking their private opinions about its meaning, and as a justification, or excuse, or palliation of the offense charged. Under these circumstances, it seems to me that all the authorities cited by my friend on the other side have nothing to do with the case.

After consultation among the members of the Court,

Rev. Dr. MOORE said: The Court have decided that they can not admit testimony as to usage as fixing the true meaning of the canon in question.

Mr. TRACY. May it please the Court, as the announcement came to our ears here at the table, we did not understand precisely whether the evidence is entirely excluded, or excluded only with reference to one bearing of the case.

The CHAIRMAN. It is excluded with reference to one bearing.

Mr. TRACY. If it is excluded only in reference to one bearing, then there is no impediment in the way of my asking this question. I desire to have the decision of the Court upon this point appear distinctly on the record.

The CHAIRMAN. The Clerk will read the decision.

Mr. TRACY. With all respect to the Court, in order to get the matter in proper shape, I ask leave to put the question again, and then, if it is excluded by the Court, my point will be covered. The judges will understand that it is necessary for us either to have our question excluded, or else to insist upon an answer; and if it is excluded, but excluded on one ground only, we wish to understand the ruling distinctly.

Mr. PARKER. Allow me to suggest that, under the terms of that decision, I regard the question as admitted. The Court say, in substance, "You may give the evidence, but we will not give it the force of interpreting the canon." Is not that the decision of the Court?

Mr. TRACY. I ask the Clerk to read that question to Dr. Muhlenberg and take his answer; and I ask the witness to answer the question unless the Court otherwise direct.

The CHAIRMAN. What is the object of introducing this testimony?

Mr. TRACY. We ask the question, if the Court please, and I understand there is no objection to it, except that the Court have announced that they will not use it for the construction of the canon.

The CHAIRMAN. It was distinctly stated that that was the object you had in view in offering the testimony.

Mr. TRACY. That is the prime object; but I may also mention, on the question of relevancy, that if a thing is relevant at all in a case, it may be received, and the weight to be attached to it is not to be settled at the time of its introduction, but only when the whole case is in.

Mr. NASH. I made a general objection to the testimony. In making his argument in answer, the learned counsel stated that it was relevant in two points of view—first, as affecting the construction of the canon, and then, if not admissible upon that ground, admissible as bearing upon the sentence to be pronounced upon the accused if he should be found guilty. Therefore the decision, as announced by the Court, does not seem to cover the whole ground, and the counsel on both sides are a little uncertain as to whether the Court meant to admit the evidence in any point of view, or to exclude it entirely.

The CHAIRMAN. It will be remembered that on a former occasion the Court ruled that it was not clear as to how far testimony regard-

ing usage would be competent to establish the meaning of the canon. The Court is now clear upon that point, and is not willing to admit testimony having that distinct purpose in view. At the same time, they are willing to admit this question and receive the witness' answer, and will give it such weight and direction as they see fit.

The Clerk read the question to the witness.

A. During the whole course of my ministry I have known ministers of our Church now and again to officiate in non-Episcopal churches, and have done so myself without ecclesiastical censure.

Q. In such places, if the place of officiating be in a city, town, or village containing one or more churches of the Protestant Episcopal Church, what usage has there been of asking or receiving express consent by the rectors or any of them?

A. I can't speak of general usage, but I have known many cases where there was such officiating without asking such consent—acting without any consultation, as I had done myself.

Q. Have you known any instance in which ecclesiastical censure has been pronounced upon the minister so officiating by reason of his so doing without the consent of the rector or rectors?

Mr. NASH. I do not think that that comes within the ruling of the Court.

Mr. TRACY. It clearly does.

Mr. NASH. I do not propose to take up any time about it, but I object to the question.

Mr. TRACY. I would like to hear what the objection is.

Mr. NASH. They set out to prove usage. Now they are trying to prove absence of ecclesiastical censure, or something of that kind.

Mr. TRACY. The Court seems to be resting this case upon the mere question of how the canon is to be interpreted, and I take it that if this was a prosecution for a statutory offense—for example, for shooting a partridge in the month of February—in considering the question of how severely the offender should be punished, the court would look at the fact that for several generations people had been in the habit of shooting partridges in February, and that this was the first man tried upon it. And so the fact that so experienced a clergyman in the Church as Dr. Muhlenberg has never known ecclesiastical censure to be pronounced for this offense is a fact that ought to be allowed to be put into this case.

Mr. NASH. There have been instances of such censure.

Mr. TRACY. I would like to know where?

Mr. NASH. I have the record here—a deposition from the ministry by Bishop Kip, of California.

Mr. TRACY. You must have got it by telegraph?

Mr. FULLERTON. The case must have occurred before California was civilized.

The Court overruled the objection.

A. I don't recollect one.

Q. What, so far as you know, has been the usage of ministers of this Church as to performing other offices of the ministry to or for members of their own congregation, although such members be temporarily residents within the local bounds of other parishes?

A. As far as my knowledge goes, such usage is and always has been common.

Q. According to that usage, does the minister so officiating obtain the consent of the local rector or rectors before so doing?

A. I can't say that is always the case; I am sure, as a matter of courtesy he may; but not in compliance with any requirement of law. That is merely my opinion.

Q. What has been and is the usage of ministers of this Church as to the use of something less than the full form of prayer and service by the Prayer-Book preceding a sermon under special circumstances; state under what circumstances?

Mr. NASH. That we shall object to. There is no charge in the presentment of any irregularities of that kind.

Mr. FULLERTON. The gentleman took great pains to prove such irregularity, and proved it under objection.

Mr. TRACY. I supposed that after the argument that was had about it, something was to be made of that evidence in regard to how Mr. Tyng officiated on that occasion, and in regard to whether he used the full church service or not. If that is not in the case at all, then we have nothing to say on the subject on our side.

The CHAIRMAN. What part of the evidence do you refer to?

Mr. TRACY. To the evidence given by the two Mr. Van Rensellaers as to the manner in which Mr. Tyng officiated.

Mr. NASH. To make out the offense charged, we have to show that the defendant officiated; and we could not show that he officiated without showing what he did. In that way it came out on the cross-examination of the witnesses, that the services held by him consisted in the reading of prayers and in preaching. It also appeared that the prayers in the Prayer-Book were not used in their order, and it appeared perhaps more fully by Dr. Tiffany's testimony; but that is not the ground of this proceeding before the Court. The charge is simply that he did officiate; not that in officiating he did not use the whole Church service.

Mr. FULLERTON. Why, if the Court please, the charge would have been proved by simply putting to the witnesses the questions, "Did he officiate?—did he read prayers?—did he preach?" It was not necessary to show what prayers he read or what form of service he used; but the learned counsel did go into that with great particular-

ity and minuteness, and the evidence was admitted by this Court under objection, the Chairman stating, in regard to one branch of the case, that it might aggravate the punishment.

The CHAIRMAN. The Court has no recollection of that at all.

Mr. FULLERTON. Yes; I put the question whether that would aggravate the offense, and the reply of the Court was that it might do so. The words are burned into my mind, because I thought at the time that it was no part of the charge contained in the presentment.

Now, having gone into that evidence, and having shown with great particularity what was done on that occasion, it certainly would seem to be proper for us to meet that evidence by showing what the custom and the usage of the Church is in that regard.

The CHAIRMAN. Will the Clerk please turn to the testimony on that subject?

Mr. FULLERTON. I will turn to it, your Honor. Here it is, in the examination of Mr. Van Rensellaer. "Q. To what church are you attached, or where do you attend generally? A. Well, I have attended for nearly a year St. James's Methodist Episcopal church. Q. You attended that church, then, in July last? A. Yes, sir. Q. You had no objection to Mr. Tyng's preaching there on the occasion you have referred to? A. No, sir; I had nothing to do with it anyhow.

"The CHAIRMAN. (To the Clerk.) What have you written there?

"The CLERK. (Reading.) 'Had you any objections to Mr. Tyng's preaching there?'

"The CHAIRMAN. Scratch that out. It is of no consequence.

"Mr. FULLERTON. I would like to ask the Court whether that is the first thing they have discovered of no consequence in this case?

"The CHAIRMAN. No, sir, it is not.

"Mr. FULLERTON. Permit me, then, to ask another question. Why your honor did not commence this system of expurgation on the first discovery—was it left until *I* asked a question which seemed to be of no consequence?

"The CHAIRMAN. It is well to begin now, perhaps. Go on, sir.

"Mr. FULLERTON. I repeat the question: Had you any objections to Mr. Tyng's preaching there on that day?

"The CHAIRMAN. Whether the witness had any objection or not, has nothing to do with the case.

"Mr. FULLERTON. I do not know that it has any thing to do with it, whether any body else was present besides Mr. Tyng. I do not know that it has any thing to do with it, whether he pronounced absolution or not.

"The CHAIRMAN. It is for the Court, I presume, to judge what questions are relevant to the case. The objections of the witness are of no consequence.

"Mr. FULLERTON. Allow me to ask, was it of any consequence whether Mr. Tyng wore a gown or surplice on that occasion?

"The CHAIRMAN. *It may be in the view of the Court.*"

The CHAIRMAN. But the statement that it would "aggravate the punishment," I have been listening for that.

Mr. FULLERTON. That is the interpretation of the language. How can it be of consequence to the Court, unless to aggravate the punishment? The Court did listen to evidence upon this subject and did state distinctly that they deemed it of significance; but I don't know of what significance it could be unless it were held to aggravate the punishment.

The CHAIRMAN. There is nothing of that sort upon the record of the Court. That which you have just read is a mere conversation taken down just as what I am now saying may be taken down. What I said then was, that it was for the Court to judge of the relevancy or irrelevancy of the questions put by counsel, and that the particular evidence referred to might have some significance in the view of the Court; but as for saying that the respondent's not wearing a gown or surplice might be an aggravation of his guilt, nothing like that appears upon the record of the Court or elsewhere, because nothing of that kind was said.

Mr. FULLERTON. Then it can be of no consequence.

The CHAIRMAN. It is for the Court to judge. The admission of the testimony is one thing. What significance it has is another.

Mr. FULLERTON. I did not suppose at the time that was given that it was to be taken in mitigation. (Laughter.) The question now is, whether, they having proved what is outside the presentment, we have not a right to meet that evidence and explain it.

The CHAIRMAN. We have no objection to the question.

The CLERK read the question to the witness.

A. Ministers of our Church officiating in extraordinary circumstances use as much of the prescribed order of the Prayer-Book as they deem expedient, or when officiating in non-Episcopal churches, sometimes conform to the order of those churches, as I do myself.

CROSS-EXAMINED BY MR. NASH.

A. Is it not, in your view, incumbent upon every minister of our Church, preaching in a regular congregation of our church, to use the whole Morning Prayer before the sermon?

Mr. TRACY. I don't know that we have any objection, but that is asking for an opinion.

Mr. NASH. That is my objection to all this kind of testimony, that it is opinion, not custom.

A. Yes; to a regular congregation.

Q. Is not this matter of canonical obligation?

A. Yes. May I explain that? because this is a very important point.

Mr. NASH. I will give you an opportunity. Your view, then, is that the canon does not apply when he preaches in a congregation not of our Church?

A. That is my view.

Q. Do you mean to say that that is the view of all the clergy, or only of a portion?

A. I think it is the view of only a portion.

Q. Do you know of any instance in your experience of a minister of this Church having gone into a village or town in which there were one or two ministers in charge of churches, and preaching, or officiating therein against the express protest of such ministers? If so, how many such instances?

A. I can not call to mind any. I may say *non mi ricordo.*

Q. Is it the usage, so far as you know, of the ministers of this Church so to officiate, after objection made?

A. I have answered that in saying that I didn't know of any such instance.

DIRECT EXAMINATION RESUMED.

Q. Will you state whether you know of any instances of objection being made by the rector or rectors under such circumstances?

A. No, I don't know of any. May I say a word by way of explanation? The question first asked me was, Is a minister bound by canon to use the order of the Prayer-Book whenever he preaches? That I would have answered, No. The question was then modified: Is he, on the occasion of a regular Morning Prayer before sermon, obliged to use it? I said, Yes. When the sermon is part of the regular worship, of course he is bound; but he may preach on many occasions when he does not use the Prayer-Book at all.

Q. How large a portion of the clergy of this Church do you think hold the opinion you have mentioned as to their being bound to use the whole of Common Prayer before the sermon?

Mr. NASH. I do not suppose that you are going to settle this by the majority rule.

A. I think that is the view of a large portion. I am very sure about it myself. That is all I can say.

Q. The question is, what portion?

A. Well, I think a large portion, a considerable portion.

Rev. Dr. NEWTON called; examined by Mr. TRACY.

Q. Please to state how long you have been in the ministry of the

Protestant Episcopal Church, and where you have exercised that ministry?

A. About thirty years. First year in West-Chester, Pa., the remaining years in Philadelphia.

Q. What, so far as you know, is and has been the usage of ministers of this Church as to officiating in churches of other denominations for their congregations, or in other public places, within a village, town, or city where there is one or more Episcopal churches?

A. In Pennsylvania——

Mr. NASH. I object to evidence of the usage in Pennsylvania.

Mr. TRACY. The objection is rather premature. It may be that the witness was going to say, "In Pennsylvania, I know nothing about it." (Laughter.)

Mr. PARKER. It is not the canon of the diocese that is said to be violated; it is a canon of the whole country, of which Pennsylvania is a part.

Mr. TRACY. We propose to show the usage right under the sight of the Bishop of New-Jersey.

The Court overruled the objection.

A. We in Pennsylvania are accustomed to preach wherever, in the providence of God, there is an opening for us: no man contradicting.

Q. To what extent within your personal knowledge or notice has this usage prevailed?

A. I have done so myself on many occasions, and have known of many others doing so also.

Q. What can you say of the same thing occurring in New-Jersey?

A. I have officiated myself several times in Burlington—twice in the Presbyterian Church, and once at a funeral service in St. Mary's Church.

Q. What do you know of the usage of ministers of this Church as to receiving express consent from the rectors, or any of them, within the town, city, or village, before so officiating?

A. I never asked any consent myself. I never had my own consent asked whenever clergymen officiated in the burial-ground of my parish.

Q. What, so far as you know, has been and is the usage of ministers of this Church as to performing any office of their ministry to or for members of their own congregations, although such members be temporarily resident within the local bounds of other parishes, without obtaining consent of the local rector?

A. That their connection with the parish to which they belong gives their own rector the right to officiate for them wherever he may be called upon so to do.

Q. What has been and is the usage of ministers of this Church as

to the use of something less than the full service and prayers prescribed by the Prayer-Book, before sermon, under special circumstances?

A. That for all stated regular services the minister is bound to use the appointed service, and that for special occasions he is at liberty to do what the occasion calls for.

CROSS-EXAMINED BY MR. NASH.

Q. Dr. Newton, suppose that some of the parishioners of the Church of the Holy Trinity, New-York, and some from St. Alban's, happened to be attendants at St. James's Methodist Episcopal church, New-Brunswick, on the same Sunday morning, which of those clergymen, according to the construction you have given to the canon, would be entitled to preach in that church, by reason of the presence there of their respective parishioners?

A. I should think that would depend upon which was invited, and that, if both were invited, it would be a question for them to settle between themselves. (Laughter.)

Q. It is the invitation, then, not the presence of the parishioners, that gives the right to preach, is it not?

A. I suppose the invitation is essential to the right to preach there.

Q. Are you the Rev. Dr. Newton whose sermon Mr. Jay Cooke desired this Court to read "carefully and prayerfully"?

A. I did not see Mr. Jay Cooke's letter, nor did I see the sermon which Mr. Jay Cooke sent.

Q. Are you the author of the "Declaration," which appeared in the *Episcopalian* of December 11, 1867?

A. I am not the author, but I am one of the signers.

Q. In one of your first answers you said, "We of Pennsylvania are accustomed to preach," etc. Whom do you mean by "we"?

A. The clergy generally.

Q. Did you ever preach within the bounds of any village or township in which there was one or two ministers of the Church in charge of parishes, against their express protest, or that of either of them, previously made?

A. I have preached in such places, but never was so prohibited.

Q. You have never preached, then, against such protest?

A. No; I never had such protest to preach against. (Laughter.)

Q. Is it the usage of ministers of this Church, so far as you know, to preach, or otherwise officiate, against such protest previously made?

A. I have never known such protest made within my knowledge or observation of the usage of this Church.

Q. Are any of the usages of which you have spoken as existing, usages the regularity of which is disputed by various clergymen of the Church?

A. In my experience of thirty years I have never met with any dispute.

Q. So far as you know, there is an entire unanimity of construction, on the part of the clergy, of the canon regulating the officiating of ministers within the cures of others?

A. I give my testimony as to usage within the circle of my own knowledge and experience.

Q. Do you mean to say that you don't recognize those who differ from you as having any thing to do with the question?

A. I do recognize those who differ from me, but they have never crossed the path of my experience.

The COURT announced that there would be a recess until four o'clock.

The COURT reassembled. There being no objection, Mr. R. M. Richardson was appointed Clerk.

The Rev. Dr. CANFIELD called; examined by Mr. TRACY.

Q. How long have you been a minister of this Church, and in what diocese have you exercised your ministry?

A. I was ordained in the summer of 1844, and have officiated in Ohio five or six years, and in Pennsylvania and in New-York over eighteen years.

Q. What do you know of the usage of ministers of this Church when holding public worship and preaching in churches of other denominations, in a town or village containing one or more Episcopal churches, as to so doing without receiving the consent of the rectors, or any of them?

A. I can hardly speak for others, but I have never received such permission when officiating myself, and I have so officiated frequently.

Q. What do you know of the usage of ministers of this Church, when officiating, to or for members of their own congregations, when such members are temporarily residing within the parish boundaries of other ministers of this Church, without receiving consent of such ministers?

A. My own custom has been to follow my own congregation wherever I could find them; can't say what others have done.

Q. Your church is in Brooklyn, is it?

A. Yes, sir.

Q. What do you know of the usage of ministers of this Church in New-York and other places, officiating at funerals of their parishioners at Greenwood Cemetery and other places in Brooklyn?

A. It is their general custom to do so, without any express permission from the clergy of Brooklyn.

Q. What do you know of the usage of ministers of this Church as to using less than the whole prescribed form of worship and prayers before sermon on special occasions, or under special circumstances?

A. The usage has been general within the entire sphere of my ministerial observation and experience.

CROSS-EXAMINED BY MR. NASH.

Q. Is your congregation in the habit of scattering a good deal during the summer season?

A. Yes, sir.

Q. You do not consider it your duty, do you, to follow them to their several summer resorts?

A. I might so consider it under certain circumstances.

Q. Did you ordinarily?

A. No.

Q. Did you ever officiate within the territorial limits of the parochial cure of another clergyman of your Church against his protest, previously made.

A. No, sir.

RE-DIRECT BY MR. TRACY.

Q. Did you ever violate any such protest, or receive any which you could violate?

A. Never.

Rev. HEMAN DYER, D.D., called by the respondent; examined by Mr. Tracy.

Q. How long have you been a minister of the Protestant Episcopal Church, and in what diocese have you exercised your ministry?

A. Something over thirty years—about thirty-three years—in Ohio, Pennsylvania, and New-York.

Q. What particular clerical occupation have you now?

A. I am an assistant minister of the Church of the Ascension, New-York. Perhaps that covers the ground.

Q. What other occupation have you at present?

A. I am Corresponding Secretary of the Evangelical Knowledge Society, and one of the Secretaries of the American Church Missionary Society.

Q. What do you know of the usage of the ministers of this Church as to holding public worship, and preaching, in churches of other denominations and public places in a city, town, or village where there are one or more Episcopal churches, without receiving the consent of the rectors, or any of them?

A. I have repeatedly done so myself, and have known of many cases where others have done the same.

Q. What do you know of the usage of ministers of this Church, as to officiating for, or with members of their own congregations, when church-members are temporarily residing within the parish bounds of another minister of this Church?

A. I have known many cases where such services have been rendered, and I never supposed there was any doubt about the right of it.

Q. In such cases, what is the usage as to first receiving consent from the local rector?

A. I have never heard of such consent being asked or expected.

Q. What do you know of the usage of ministers of this Church as to using less than the whole prescribed form of worship and prayers before sermon, under special circumstances?

A. When I resided in Pennsylvania, under Bishop Onderdonk, upon his advice——

Mr. NASH. I think I must object to this. The Court has allowed general usage to be given for general purposes, but not the special instances.

Mr. TRACY. I suppose that what the witness is stating is only preliminary. It is well enough for him to mention it.

Mr. NASH. It is well enough for him not to mention it.

The CHAIRMAN. There must be some limit somewhere. Great latitude has been given already.

Mr. TRACY. We have followed precisely the rule the Court has allowed, and have not deviated intentionally in any respect.

The CHAIRMAN. Most of the answers of the witnesses have been as to their own individual experience, which has been thrown out.

Mr. TRACY. You can not always prevent the witness giving his own experience.

Mr. NASH. Suppose we leave out what Bishop Onderdonk said?

Mr. TRACY. Certainly; leave that out.

The CHAIRMAN. The witness will just state what he knows of the practice.

Dr. DYER. That is just what I was doing.

The CHAIRMAN. You were telling us the advice of Bishop Onderdonk.

Dr. DYER. I was going on to state further what I did myself.

The CHAIRMAN. By your own advice. (Laughter.)

Dr. DYER. I was going on to state what I did myself, by this advice he gave me.

Mr. NASH. The question is as to general usage, and individual experience does not come within that.

Mr. PARKER. The general usage of even Bishop Onderdonk, is, I suppose, admissible.

Mr. TRACY. Better hear what the doctor has to say, and when he gets to the end of a sentence, we can see what is to be put down.

Mr. NASH. That is entirely irregular.

Mr. TRACY. I have not asked what Bishop Onderdonk said.

(The question was here read by the Clerk.)

The CHAIRMAN. That is a very plain question.

Dr. DYER. May it please the Court, if I can not state the facts, how can I speak of the practice of the clergy?

Mr. NASH. You can give general practice without enumerating instances.

Dr. DYER. If I say what is the general practice, what right have I to speak of those I did not see or hear?

The CHAIRMAN. You can speak of your own knowledge.

Dr. DYER. That is precisely what I was doing. (Laughter.) So far as I know or believe, it was the universal practice in Pennsylvania—I must give no names, I suppose—it was the universal practice to abbreviate, and make up from the Prayer-Book services for special occasions; and so far as I know or believe, it is a very general custom in the Diocese of New-York.

CROSS-EXAMINED BY MR. NASH.

Q. How long, Doctor, since you had charge of a parish as rector?

A. About nineteen years.

Q. Since that time you have had a general oversight of the Church at large, have you not?

A. Only in spots. (Laughter.)

Q. Do you consider yourself as being subject to the restraints of the canons of the General Convention?

A. I consider myself as a presbyter under the canons of the General Convention in the Diocese of the State of New-York.

Q. I will read canon 20.

(Reads canon.)

Do you consider your practice that you have spoken of as being in accordance with the language of that canon as it would be generally understood by an ordinary reader?

A. I should so understand it, if I comprehend your question.

Q. You understand that practice to be in conformity with the provisions of this canon?

A. Yes, and if counsel will allow, I will state facts to show why I think so.

Mr. NASH. Certainly; any explanation you have to give. I would ask, do you mean by "special occasions" services at the ordinary hour of Sunday morning service, when a sermon is preached?

A. I should not understand that the regular services of Sunday morning or afternoon in a church were special services.

Q. Did you ever preach within the parochial cure of another minister of this Church against his protest, previously made?

A. I never did.

RE-DIRECT BY MR. TRACY.

Q. State whether, by the usage you have mentioned in the case of public worship, and a sermon in a church, and before a congregation of another denomination, where a minister of this Church officiates temporarily, and for a single occasion, the use of the whole prescribed form of worship is practised?

A. I have done both; and, so far as my knowledge extends, our clergy have frequently adapted the service to the circumstances.

RE-CROSS-EXAMINED BY MR. NASH.

Q. About how many times, officiating in the congregations of other denominations, would it take, according to the usage you have spoken of, to exempt a clergyman of this Church from all obligations in respect of the canons?

A. More times than I could number.

Q. You think when he preaches once, the canon does not apply. Is that it?

A. I think the canon is always in force.

Q. Do you apply the same latitude of interpretation to the Thirty-nine Articles?

Mr. PARKER objected, saying there was no latitude of interpretation. (Question withdrawn.)

Rev. STEPHEN H. TYNG, D.D., called by the respondent; examined by Mr. TRACY.

Q. Please state how long you have been a minister in the Episcopal Church, and in what dioceses you have been occupied?

A. I have been in the ministry forty-seven years; and I have been occupied in the ministry more or less in the Dioceses of Maine, New-Hampshire, Massachusetts, Rhode Island, Connecticut, Vermont, New-York, New-Jersey, Pennsylvania, Maryland, District of Columbia, Virginia, South-Carolina, Kentucky, Illinois, and Ohio.

Q. What do you know of the usage of ministers of this Church, as to officiating in public worship and preaching in the churches of other denominations, and public places within a city, town, or village,

where there are one or more Episcopal churches, without receiving the consent of the rector, or any of them?

A. I know the habit of such officiating has been universal within the field and time of my observation; and I never heard of a consent being required or applied for.

Q. What do you know of the usage of ministers of this Church as to officiating for or with members of their congregations, when such members are temporarily residing in the parish bounds of another minister, without receiving such minister's consent?

A. I know that it has been the universal habit within the same field of observation for our ministers to follow their own parishioners in the required offices of the ministry, wherever they went, unchallenged and free.

Q. What do you know of the usage of ministers of this Church in making use of less than the whole prescribed form of worship and prayers before a sermon, under special circumstances?

A. In the same field of observation, I know that all our ministers are regular and punctilious in the use of the Book of Common Prayer, as in its own order it is prescribed upon all regular occasions of public worship, in our own regular churches and congregations. I also know, in the same field of observation, that ministers of all classes of opinion in our Church have been accustomed, upon irregular occasions of worship, to use the Prayer-Book in the best possible conformity to these occasions—omitting responsive parts of the service, which could not be performed without the possession of books. The only single exception I ever knew was of a very distinguished presbyter of the Diocese of New-York, who once read the morning prayer on such an occasion, his own part in one voice and the responses of the people in another. (Laughter.)

CROSS-EXAMINED BY MR. NASH, ON BEHALF OF THE PRESENTORS.

Q. Were you present on that occasion, Dr. Tyng?

A. I was not.

Q. What is your authority for the statement?

A. The statement of large numbers of persons.

Q. What we call hearsay?

A. What we call hearsay—cotemporaneous statements.

Q. Do you consider an assemblage of persons in a non-Episcopal place of worship, at the usual hour of Sunday morning service, an irregular occasion?

A. I consider——

Mr. NASH. I am using your own language, and I would like as categorical an answer as possible.

Dr. TYNG. I will try and do so. I am but a bewildered old gentleman, and you will bear with me. (Laughter.) I consider all non-Episcopal assemblages for worship to be irregular.

Q. You also think, do you not, that a general mingling of ministrations of those bodies is calculated to tend to disorder and confusion rather than to peace and harmony?

Dr. TYNG. Do you wish my opinion on that subject? I thought I was examined on the facts.

Mr. NASH. I understand your previous answer to be matter of opinion. I wish to follow it up.

Dr. TYNG. I am perfectly willing.

Mr. NASH. Be good enough to answer the questions, as put, so that both will read connectedly?

Dr. TYNG. I think that such is the excellence of the forms of worship of the Episcopal Church, that they can bear comparison with any others, and in a reasonable and intelligent use of them we habitually gain among other denominations far more than we lose; and that such ministrations, bringing people out of irregular relations into regular ones, are adapted to promote ultimate peace and harmony.

Q. What is the irregularity you refer to in the ministrations of non-Episcopal denominations?

A. The want of an episcopacy in their ministry, and of a liturgy in their worship.

Q. Have you, within the last few years, solemnized matrimony in New-Brunswick, New-Jersey?

A. I have.

Q. Did you not previously procure the consent of the rector of Christ Church?

A. I did.

Q. Was not that in accordance with your habitual practice, under similar circumstances?

A. Precisely.

Q. Was it not in accordance with the general practice of the clergy of our Church, under similar circumstances, within the sphere of your experience?

A. I can not answer it without describing the circumstances, inasmuch as I am asked to define similar circumstances.

Mr. NASH. You will please not to avoid answering the question?

Dr. TYNG. My dear sir, I have no disposition to avoid answering the question.

Q. What were the circumstances that dictated the asking of that request?

A. A family from St. George's Church, New-York, permanently changed their residence to New-Brunswick, and became part of the

congregation and communion of Christ Church. The lady was, therefore, a communicant of Christ Church, under the charge of Rev. Dr. Stubbs; recorded, therefore, in his list of parishioners, and part of his parochial cure.

Q. Did her being a communicant of the church change the aspect of the matter?

A. Her being a recorded member of Christ Church made the whole aspect of the matter.

Q. Did you ever preach or officiate within the limits of any village, town, or township, in which there were one or two ministers of this Church in charge of churches, against the protest of such ministers, or either of them, previously made?

A. The protest described is a proceeding so entirely uncanonical, that I never heard of it until this trial, in the Episcopal Church.

Q. Was not such a protest made against your officiating at Schooley's Mountain in New-Jersey, a few years ago?

A. Never.

Q. By the Rev. Mr. Morrison?

Dr. TYNG. Do you wish for an account of the preaching at Schooley's Mountain?

Mr. NASH. I wish to know if you preached there against protest?

Dr. TYNG. There was no protest of any kind whatever. I preached at Schooley's Mountain by request, appointment, and particular designation on the part of Mr. Morrison, who was a visitor, so far as I know, there. I say "particular designation," because he described the place in which I was to preach.

Q. Is not the practice you have spoken of, of ministers of this Church officiating in the churches of other denominations within the town, village, or city limits in which there are settled ministers of this Church, a practice confined to ministers of certain schools, or varieties of opinion?

A. I have already said that, in my observation, it has been practised by ministers of every class and school, within my knowledge, in the Protestant Episcopal Church. Ministers of a school the least hostile and denunciatory to the churches and people of other denominations will be the most likely.

MR. NASH. I think you have answered that before. I wish to know if it is universal?

A. It is universal, so far as I know.

Q. Has the practice you speak of prevailed against the express protest of members of this Church?

A. Protests of resident ministers of this Church are so entirely extra-canonical, that I have never heard of their prevailing among regular and well-instructed ministers. (Laughter.)

Q. Do you mean to say that whether you hear of a thing or not, depends upon its being canonical or extra-canonical?

A. I should hope that I might say, that things extra-canonical were not likely to be heard of in the Protestant Episcopal Church.

RE-DIRECT EXAMINATION BY MR. TRACY.

Q. Some question was put to you touching your holding public worship at Schooley's Mountain. State what occurred?

Mr. NASH. I do not think that necessary, unless Dr. Tyng wishes.

Dr. TYNG. I do not wish to go into it. At the same time, I am perfectly willing to answer.

Mr. NASH. It is sufficient that the information we have had on the subject turns out to be incorrect.

Dr. TYNG. I have no disposition to say any thing that would reflect on the character of a brother minister, as, in my judgment, these circumstances would. I should prefer to suffer under some imputation myself, than reflect on a younger brother.

Q. Please to state whether there was any claim that the permission was revoked, or withdrawn?

Dr. TYNG. That would compel me to state the facts. I will, if required, state them in the most respectful manner, just as they occurred, and they must exercise their own influence.

The CHAIRMAN. I do not think it is necessary to go into any examination of witnesses which would involve an imputation on a gentleman who is not here to defend himself.

Mr. TRACY. I merely want to show how the controversy arose.

Mr. NASH. If the question is put, objected to, and waived, will it not answer your purpose?

BY REV. DR. HOFFMAN, OF THE COURT.

Q. Was there not a complaint made by the ecclesiastical authority of the Diocese of New-Jersey, to the ecclesiastical authority of the Diocese of New-York, in reference to your officiating at Schooley's Mountain in 1859, within the cure of the Episcopal clergyman in charge, and against his protest?

A. In 1859, the Rt. Rev. Bishop Potter, my diocesan, presented a paper to me, signed by the Rev. Eugene A. Hoffman, (one of the Rev. Judges of this Court,) purporting to be a complaint of my officiating at Schooley's Mountain, against the protest, perhaps, (I do not know that the term "protest" was used,) or without the permission of the minister in charge. There was no Episcopal church there. At my own solicitation, my Bishop appointed a committee of inquiry,

whom I met at their summons, but no one appeared to sustain or prosecute the charge. In accordance with this, the committee reported to the Bishop.

Q. Was not that paper signed by Rev. Mr. Hoffman, as Secretary or Clerk of the Standing Committee of the Diocese of New-Jersey, it being the ecclesiastical authority of that diocese at that time?

A. It was signed by the Rev. Eugene A. Hoffman, as the representative of the ecclesiastical authority of New-Jersey; but whether as president or secretary I could not say.

RE-DIRECT, BY MR. TRACY.

Q. Please now state the circumstances connected with that matter, intermediate the invitation and appointment you have mentioned, and the attempt at prosecution you have mentioned?

A. In August, 1859, a family of St. George's Church, sojourning at Schooley's Mountain, generously invited me and my family to come there for a few weeks, as visitors to them. I had before never seen the place. Previous to going, I received a letter from a Rev. Mr. Morrison—his Christian name I do not remember—who represented himself as employed under the diocesan authority of New-Jersey as a missionary, officiating at a large number of places in that region. Mr. Morrison requested me to preach for him in a chapel which had been built in the neighborhood of the hotel, in the daytime of Sunday, and in the drawing-room of the Heath House in the evening. Between the writing of this letter and the time appointed for me to preach, Mr. Morrison had some misunderstanding with the owner of the Heath House, and had moved his services to the parlor of the Belmont House. I arrived at the Heath House on Friday evening. On Sunday, in the afternoon, Mr. Morrison called upon me, having made all his appointments for these services, and required me to vacate his appointments, to which I had agreed, and to follow him to his new premises, which I declined. Mr. Morrison then forbid my preaching in all that region, (laughter,) which I laughed at as absurd, and I fulfilled my appointments, as agreed.

Q. You have mentioned a service by yourself, in New-Brunswick, by permission. Can you mention any other there which you performed without permission of the ministers of New-Brunswick, or either of them?

A. I baptized a child in the same house and family where I had married the mother the year previous; I did not ask permission, because she was a member of my cure, and I was not officiating within the cure of Dr. Stubbs.

Q. Have you ever made any religious addresses in New-Brunswick, not in an Episcopal church, without permission?

A. I delivered an address for the New-Jersey Bible Society, (I think the name was,) in a Presbyterian church, in the city of New-Brunswick. I did not ask permission, because I did not deem it officiating, in the sense of the canon, at all.

RE-CROSS-EXAMINATION BY MR. NASH.

Q. At the time of the baptism you have spoken of, you were rector of St. George's Church, in the city of New-York?

A. I was.

A. You were not rector of any church in New-Jersey at that time?

A. I am thankful to say I was not. (Laughter.)

Q. If the rector of Christ Church, New-Brunswick, had baptized that child, would that have been an intrusion upon your parochial cure?

A. I answer, without my permission, it would.

Q. Please explain how a minister belonging to this Church can intrude upon the parochial cure of another clergyman, by preaching, unless he invades his church edifice?

A. A minister——

Mr. NASH. Please to give me an answer to that question?

Dr. TYNG. You ask me to explain, and how can I explain unless I begin to explain?.

Mr. NASH read the question.

Dr. TYNG. By "preaching" he could not do it, certainly. A minister's church edifice is his place of preaching.

Q. At Schooley's Mountain, where did you preach?

A. On Sunday morning, in a chapel which was built between the two hotels, which all classes occupied, which was furnished with a Bible, Prayer-Book, and Prayer-Books among the people; and in the evening I preached in the parlor of the Heath House, as Mr. Morrison had appointed for me.

RE-DIRECT, BY MR. TRACY.

Q. How otherwise than by preaching can one minister intrude into the parochial cure of another?

A. By performing, or by undertaking to perform, any official duty as minister, as a clergyman of the Protestant Episcopal Church, in a church edifice, or in the dwellings of the families belonging to the congregation of that church.

Q. How would it be as to intrusion, if he attempted to set up a rival church among the people, and near to the edifice of other ministers, "within their cure," in the broader sense?

A. That would be the most absolute intrusion.

Mr. TRACY. It was not mentioned in the ways you enumerated.

Dr. TYNG. It is an intrusion I would hardly think one clergyman would undertake against another.

RE-CROSS, BY MR. NASH.

Q. You mean, then, that "officiating," by preaching, reading prayer, etc., as mentioned in the canon, means the establishment of another parochial cure?

Q. I do not see how that can be drawn from any thing I have said.

A. I have said that is a third thing that would be most absolute intrusion.

Question repeated.

A. I do not mean to give such an answer. I mean to say that preaching and reading prayers among the families or in the church edifice of a clergyman, for the purpose of getting up another congregation and church, without his consent, is the most absolute intrusion.

Q. Suppose the preaching were for the purpose of impairing the confidence of the congregation in their minister, would that be an intrusion?

A. If the preaching in a church or among the families of a settled minister, without his consent, be an intrusion, the motive suggested of undermining and destroying his personal influence and reputation would make it the basest of all intrusions.

Q. Suppose the reading and preaching were in a school-house adjacent to the church edifice, or a court-house, if you please, would that be an "officiating" within the cure of the rector in charge?

A. I hold that the canon gives no territorial jurisdiction whatsoever to a rector but the public edifices of his own congregation and the private dwellings of his accredited parishioners. Within them he is secured, and all ministrations therein without his permission are prohibited by the canon. Over a court-house or a school-house, as a public building in a city, he can have no control.

Q. How, then, is an officiating in a court-house or a school-house without permission, with the view of organizing a new parish, a violation of this canon?

A. It can be a violation of the canon only so far as it professedly interferes with the families or parishioners of the congregation or church referred to.

Q. By "professedly interferes" do you mean interferes by public announcement of such a purpose, or interferes by a different style of preaching?

A. It may interfere professedly by a public announcement or by a private series of visiting among the families of a congregation, with both which methods we are quite familiar in parochial management. In the interference by open comparison of preaching, the hardest must fend off.

Rev. JOHN COTTON SMITH, D.D., called by the respondent; examined by Mr. TRACY.

Q. Please to state how long you have been a minister of the Protestant Episcopal Church, and in what dioceses?

A. I have been a minister of this Church eighteen years, and in the Dioceses of Ohio, Maine, Massachusetts, and New-York.

Q. Did you hear the questions and answers of the last witness in the direct examination as to the usage of ministers of the Church in respect of preaching in churches of other denominations, within cities and towns where there were other churches, without permission of the local rectors; and as to ministering to members of their own parishes, while temporarily within the parish bounds of other ministers, without permission; and as to using less than the full prescribed form of worship before sermon under peculiar circumstances; and if so, please state whether or not you agree with him in these general answers?

A. I did hear those questions and answers, and while I can not say my observation corresponds in all respects, it has been in general the same as that of Dr. Tyng.

CROSS-EXAMINED BY MR. NASH.

Q. Have not yourself, Dr. Newton, Dr. Tyng, Dr. Dyer, and Dr. Canfield, (all witnesses who have been examined here,) conferred together in opposition to what you consider an erroneous construction of the canon as to the territorial jurisdiction of ministers of parishes?

Dr. SMITH. Do you mean in reference to their testimony here?

Mr. NASH. Not in reference to your testimony; in reference to the construction of the canon.

A. Perhaps this will meet the case: I never had a moment's conversation with Dr. Newton on the subject, and did not know what his views were. I did not know what Dr. Dyer's views were of the interpretation of the canon. I did not know what Dr. Canfield's views were, and have not heard his testimony. I never heard Dr. Tyng's in detail, or with any explicitness, until I heard his testimony this afternoon. That is the first time I had exact knowledge of his views on the subject. I should add that, in the case of some of these

gentlemen, there is one interpretation of the canon which I know they did not hold.

Q. I hold a paper purporting to be signed by yourself and the other gentlemen named, containing this paragraph:

"We feel compelled to affirm that, in many of the pulpits of our Church, another Gospel is preached, which is not the Gospel of Christ. The Church needs to be awakened to its peril. A paramount duty is imposed upon our clergy and our missionary organizations, to see that, so far as they are able, the pure word of God shall be preached everywhere in our land. We can not yield this liberty and obligation to any claim of territorial jurisdiction, and we hereby express our sympathy with the resistance which is made in this respect to the attempted enforcement of false construction of canonical law." Did you sign such a document?

A. I did.

Q. Do you know of its having been signed by any of the other gentlemen named?

A. I do.

Q. By all of them and by the respondent?

A. I do.

Q. Was it not so signed before this trial commenced?

A. It was, before testimony commenced to be taken.

Q. Are the constructions of canonical law alluded to in that paragraph as false held by any considerable number of the clergy of this Church?

A. I think there are quite a number who hold them.

Q. Enough to make it important to resist them?

A. Yes; one person holding such opinions and attempting to enforce them would make it of sufficient importance to resist them.

Q. Have these constructions called "false constructions" in this paragraph been held by certain of the clergymen of the Church for a considerable period?

A. I recollect hearing of them but rarely, until lately; certainly I have not been accustomed to hear of them until recently.

Q. Are you familiar with the book on the canon of the Church by the late Dr. Hawks?

A. Not particularly; I have seen the book, but have not made it the subject of special study.

Q. Did you ever read his note on the canon of 1808 on this subject?

A. I think I have read it, a long time ago.

Q. You are able to say, then, are you not, that the question of the construction of this canon has been a disputed question for twenty-five or thirty years? This book of Dr. Hawks is dated in 1841.

A. I mean to say that I had occasionally heard this false construction of the canon maintained as a matter of opinion.

The witness, in explanation of a previous answer, says: As I was asked in regard to my agreement with the answers of the Rev. Dr. Tyng, who said that he had never known consent to be asked of the rector or rectors of Episcopal churches to officiate in churches of other denominations in the same town or city, I would modify my previous answer by saying that I knew of one case in which such consent or concurrence was asked, and the clergyman asked disclaimed jurisdiction, and was offended because he was asked at all.

CHRISTOPHER MEYER called by the respondent; examined by Mr. FULLERTON.

Q. Where did you spend the month of July, 1867?

A. At New-Brunswick.

Q. Had you at that time a summer residence there?

A. I had.

Q. Of what place were you a resident at that time?

A. Of New-York.

Q. State whether, in July, 1867, you were a parishioner of Rev. Stephen H. Tyng, Jr., and, if so, how long had you been such parishioner?

A. I was since 1864.

Q. State whether, in the summer of 1867, he visited you at New-Brunswick, and, if so, under what circumstances?

A. He visited me at my solicitation.

Q. When did he make the visit?

A. On the 13th of July he came there, which was on Saturday.

Q. What did you do, if any thing, with reference to giving notice that he would preach the following Sunday?

A. I had invited him several times to preach at New-Brunswick, but he never could get time to come. Finally he made me a promise that he might come on Saturday the 13th, and accordingly I gave notice to one of the trustees that he might come and preach there.

Q. As to the notice in the local papers in New-Brunswick and placards?

A There were no placards that I knew of; I saw a notice in the paper which was incorrrect, and I told the editor to correct the notice.

Q. Where, at that time, in New-Brunswick, were you in the habit of attending worship?

A. In St. James's Methodist Episcopal church.

Q. Were you one of the officers of that church?

A. I was.

Q. Did you contribute to any extent, and if so, to what extent, to the erection of that edifice?

A. I did; about $18,000.

Q. How many in number were there in your family at that time?

A. Eleven.

Q. Were there any other of Mr. Tyng's parishioners, outside of your own family, in New-Brunswick at that time?

A. There were.

Q. About how many in number?

A. Six or seven; I could not distinctly say; there may be more.

Q. Did you attend the services at the church of St. James on the 14th?

A. I did.

Q. Does your recollection of the services correspond with that of Dr. Tiffany?

A. It does.

CROSS-EXAMINED BY MR. NASH.

Q. With what denomination of Christians were you first connected?

A. Episcopalian.

Q. When was that?

A. In 1835 or 1836.

Q. What was your age at that time?

A. About eighteen years old.

Q. Were you a member of the Episcopal Church then?

A. Not a regular member—not a communicant.

Q. Had you been baptized at that time?

A. I had.

Q. Where?

A. In Belleville, New-Jersey.

Q. When did you join the Methodists?

A. I think it was in 1845.

Q. Where?

A. Near New-Brunswick, New-Jersey.

Q. Have you remained a Methodist ever since?

A. Until I left New-Brunswick, about four years ago.

Q. What has been your business during this time?

A. Manufacturing India-rubber.

Q. When first did you make New-York your residence?

A. In 1861 or 1862.

Q. Did you remain a Methodist here?

A. No, sir.

Q. When did you become a member of Mr. Tyng's congregation?

A. Since he first opened his church up there—about 1864.

Q. Have you become a communicant of his church?

A. I have not myself.

Q. You have attended his preaching regularly?

A. When I have been in the city.

Q. You still remain president of the trustees of St. James's church, New-Brunswick?

A. I resigned last summer; I do not know whether they have accepted my resignation or not.

Q. When did Mr. Tyng's visit terminate on this occasion?

A. On the Monday following; he had a call to go away suddenly.

Q. Is that a copy of the notice that was in the paper, [*Fredonian* of the 10th,] which you say was incorrect?

A. I think it is.

Q. (Reads notice.) "Rev. S. H. Tyng, Jr., of the Fifth Avenue Episcopal Church, we are informed, will occupy the pulpit of the St. James Methodist Episcopal church of this city next Sabbath. It is expected, we believe, that the new pastor of the last-named church, Rev. Dr. Tiffany, of Chicago, will be present also." What was the mistake in that notice?

A. The mistake was in describing him as of the Fifth Avenue Episcopal Church, and in saying Dr. Tiffany will be present.

Q. He was present?

A. Yes, but I did not know it when the notice appeared; he only came on Saturday.

Q. You still contribute to the support of St. James's Methodist Episcopal church?

A. I hold a pew there.

Mr. FULLERTON announced that that was the close of the respondent's case.

Mr. NASH said that, on the part of the presentors, they would not call any more witnesses. The testimony might be considered closed. If the Court could give any portion of to-morrow, they would probably close the arguments.

The CHAIRMAN inquired how many were to speak on each side.

Mr. NASH said that the proposition on their side was for Mr. Logan to open on behalf of the presentors; counsel for the respondent to follow, and he (Mr. Nash) would close.

Mr. TRACY agreed that that was the proper order; and said that they proposed to divide the argument for the defense among the counsel for the respondents, each confining himself to a special line of thought, so that whatever the number of counsel speaking might be, it would not conduce to any prolongation of the argument.

Rev. Dr. BEACH said the Court was disposed to limit the number of speakers on each side to two.

Adjourned to 10 o'clock to-morrow.

FIFTH DAY.

February 15, 1868.

The Court met, pursuant to adjournment, at ten A.M.

The proceedings were opened with prayer by Rev. Dr. BEACH.

ARGUMENT OF EDGAR LOGAN, ESQ.

Mr. LOGAN, of counsel for the presentors, then proceeded to address the Court.

May it please the Court: In making the opening and closing arguments in this case, I would desire to say, in advance, that, speaking upon things relative to the Church, as a layman, I feel some delicacy; but I know that before so learned a Court what I say will be taken and weighed with due allowance. The first point I will allude to will be a brief consideration of the testimony that has been given in the case. As in my opening, I stated the city of New-Brunswick was divided into two parishes in the view of the law of our Church—one being Christ Church, of which Rev. Dr. Stubbs was rector, and the other being a comparatively new church, of which Rev. Dr. Boggs was the rector. We produced to this Court an official map of the city of New-Brunswick, and also called before you a civil engineer of twenty years' standing in his profession, who proceeded to locate the several churches as to which there is any question in this case: Christ Church, St. John's Church of the Evangelist, and St. James's Methodist Episcopal church. That gentleman proceeded to give us distances which he stated to be accurate, and the result of his surveys, as made in the course of his profession. Christ Church, situate in the Third Ward of the city of New-Brunswick, was distant from St. James's Methodist Episcopal church, as the Court will remember, about 1700 feet; St. John the Evangelist's Church was distant from Christ Church about 3260 feet; while St. James's Methodist Episcopal church was distant from St. John the Evangelist's 3970 feet. The Court will also remember that it is in evidence that the rectory of Christ Church almost immediately fronts St. James's Methodist Episcopal church. Thus, in the view which we take of the canons of this Church, there were two parishes in the city of New-Brunswick at the time of the intrusion by the reverend respondent in July, 1867.

The evidence of the intrusion of this respondent is fresh in the memory of the Court. It is not disputed by the other side. In fact, even the witnesses adduced by that side have confirmed the testimony given by the witness for the presentors. This intrusion was not a casual or involuntary act on the part of the respondent. If it had been such, it probably never would have been brought to the attention of the Court, or troubled this Church. Such cases may occur—no doubt often do occur; but in the history of the Church a case never has before been known of this kind, under such circumstances of publicity, under such circumstances of deliberation, and against express protest made by the party whose rights were affected. It is reserved for this time to present to this Court the fact that, against the deliberate, written protest of the rector concerned, a presbyter of an adjoining diocese, casually there, or coming expressly for the purpose of preaching and officiating, wantonly intrudes within the parish of his neighbor, and commits an offense which the canon of the Church has in express terms prohibited. Much stress has been laid by the learned counsel who represent the other side, and I have no doubt great stress will be laid by them in the argument to be made yet, upon the command of our Saviour, to "Go forth into all the world and preach the Gospel to every creature." That seems to be the foundation-stone of the argument which is sought to be made by the respondent in this case. If the Court please, I must take a qualified view of this command. I do not regard it a command to every man to go forth to preach the Gospel in the sense that Christ so commanded. It was addressed, if the Court please, to men who had been his chosen witnesses, who had journeyed with him and had listened to him. They were with him in all the great circumstances of his life and at his death; had witnessed his resurrection, and were evidently his chosen witnesses. To them, after his resurrection, he gave orders and directions concerning his Church. They were thenceforward to be known as his Apostles. To them was given the direction; and by all fair argument, by all fair judgment, by all fair consideration, to their successors, confining the command to the body of the Apostles and to their successors. We find in the early ages of the Church that these Apostles gave direction concerning the Church, and from their act proceeded rules and orders relative to the Church and to its direction and government. We find that in the time of the Apostles, bishops, priests, and deacons—the three orders known in the ministry at the present day and from that day—were instituted or appointed by the Apostles themselves. The preaching of this Gospel thus committed to the Apostles has ever since been confined by the Church to its educated, sworn, and commissioned officers. We find that, in the conventions or assemblages of the

Church, the system of Christianity, in its adaptation to human affairs, and as concerning human beings, and for all time, became systematized. We find decrees or rules of faith laid down by the Apostles and their successors, and we find, as a necessary consequence and relation flowing from the establishment of a rule of faith, a rule of discipline entering into and forming a part of the system of which the rule of faith was the head. Now, in this case, complaint is not made against the respondent for the violation of a rule of faith; it is simply and purely a violation of the rule of discipline established in the Church, known for centuries. That necessity exists for this rule can best be evidenced by consideration that this is not a canon of modern growth, of modern origin. It is one that has long prevailed in the government of the Church. It is one calculated to guard against the evil which, from time to time, has arisen in the Church, of intrusion, or claimed intrusion; and from the instances in which complaint has been made from time to time, the Church, in its general conventions, has taken that canon into attentive, careful, deliberate consideration, and from time to time has amended it, until now it comes to us in the language in which it is contained in the present constitution and canons of our Church.

I merely allude briefly, in passing, leaving it to my associate, who more immediately represents the Church, and is more familiar with her canon law, occupying the distinguished position that he does in her counsels, to dwell upon it.

May it please the Court: I claim that every presbyter, every bishop, priest, and deacon of this Church is an officer. He is not only an officer, in the sense of being a leader in Christ's Church here on earth, but he is an officer in a civil, in a canonical sense. And this is by the English law. On referring to Blackstone's Commentaries—a standard book—it will be found that Judge Blackstone enters into a very careful and attentive consideration of the position occupied by the Church and by her officers, and defines these several offices, and defines their duties. Also, by the laws of the Protestant Episcopal Church of the United States, every such candidate for officership in the Church must be, first, of sufficient learning. The Church does not send forth men rashly to preach the Gospel to every creature, but she exacts and has always exacted that those who go forth to declare the word, to deliver the message, must be of such learning as the Church approves. She wishes to see that no error, no heresy shall creep into the teachings of those who are to teach to those who are to be saved, or who may be lost. In addition to that qualification, both by the English law, (I speak now of the law of the land, and not merely of the law of the Church—I speak of the law of England in reference to parishes,) not only by the law of England,

but by the law of these United States, (at least of the Protestant Episcopal Church in the same,) this officer, this candidate for officership must have a call from some congregation. He must show to the bishop, to entitle him to the imposition of hands, to the gift to be conferred by his ordination, that there is a body of Christians who have called him, who are willing to listen to his ministration, to his rendering and teaching of the Gospel. Otherwise he lacks one of the necessary qualifications of being a fit candidate, and entitled to admission into this honorable body. In the English law, where the presentation system has prevailed in regard to churches, you will find that this condition must exist; that is, that the clerk who seeks ordination at the hands of the bishop must have a presentation, or living, in which to enter and there to preach the word. In other words, I claim distinctly that no priest of the Protestant Episcopal Church of the United States receives what may be called a roving commission. He receives a distinct commission to minister, as an officer of his Church, according to the canons and discipline of it, and in the place to which he proves to the bishop he has a claim to enter. I will in this connection briefly allude to the office of the ordination of a priest—an office which this Court, I am sure, is familiar with, each member having in turn assumed its obligations and received the holy office conferred by it. Among other questions that are asked by the bishop, on such a solemn occasion, of those who are to be made priests, is this:

"Will you give your faithful diligence always so to minister the doctrine and sacraments, and the discipline of Christ, as the Lord hath commanded, and as this Church hath received the same, according to the commandments of God, so that you may teach the people committed to your care and charge with all diligence to keep and observe the same?"

"So that you may teach *the people committed to your charge.*" To which the candidate replies, "I will do so, by the help of the Lord."

Then follows another equally solemn question:

"Will you maintain and set forward, as much as lieth in you, quietness, peace, and love among all Christian people, and especially among them that are or shall be committed to your charge."

"*Answer.* I will do so, the Lord being my helper."

Thus, when the reverend respondent entered upon his ministry, he received a distinct commission from the bishop to enter upon the parish that he then or now occupies, he having a parish at the time of his ordination, there to preach and there to minister God's word. Could he have left the Diocese of New-York, and established himself in the neighboring Diocese of New-Jersey, or in any of the adjoining

dioceses, or in any diocese of the United States of America, and there preached the word? He could not. He must have his letters dimissory from the bishop who ordained him, and such letters must be presented to the bishop to whose diocese he then comes, to entitle him to act. He becomes identified with the place in which he was to minister, and he was there to remain until dismissed or permitted to leave by his bishop. He had his field of labor assigned to him, and could only be changed according to the usages and canons of the Church, under the sanction of its bishop.

I claim to this Court distinctly that every presbyter, at his ordination, is commissioned not only as to his office, but also as to his sphere of action. His sphere of action is defined. He is commissioned to enter upon it, and can only be removed from it or leave it by the sanction of its bishop. This Reverend Respondent, upon receiving his commission, must have necessarily had a parish and field of action. Otherwise he could not have been ordained to preach in this Church. Now, what is the idea of the meaning conveyed by this term "Parish"? Jacob's Law Dictionary, which is a very old and standard book, vol. 5, page 33, gives this definition of a parish, "*Parish*—Parochia—did anciently signify what we now call the diocese of a bishop. But at this day it is the circuit of ground in which the people who belong to one church do inhabit, and the particular charge of a secular priest." Thus it will appear that anciently the "parish" meant the see or diocese of a bishop. It is now regarded as the circuit of ground in which the people who belong to one church do inhabit, and the particular charge of a priest.

Now, if the Court will bear this in mind, in the course of the argument to be made, it will see clearly that a parish is not the myth which the respondent would seek to make it, but it is a body which has shape, boundaries, and dimensions. If a parish is equivalent to the diocese of a bishop, then it legitimately follows—it is the necessary consequence—that the rector—the "parson," as he is termed in law, and which is his official designation—that he must have the corresponding rights enjoyed by a bishop, within his parish. A parson or rector becomes the overseer of his parish. He oversees the form of worship that goes on therein. He is the one in charge of and having authority, through the Church, over his parish; having the right to regulate, the right to govern in all things that rightfully belong to his office. Not that he has the right of interference with the worship of other bodies of Christians; not that he has any right to control them in their action; but in the eye of his Church he is the overseer of that particular household of the Church. As such it becomes his duty every year to report to his diocesan the condition

of his parish, the spiritual welfare of and progress made in the same; so that the Church, annually assembled in convention, may intelligently see and regard this field of the vineyard, and may act upon and give orders concerning it, and, where they see fit, may make a change for the better, or may abate grievances by their action.

In connection with this statement, I would advert to the canons of the Church regarding the formation of new churches or congregations within the existing parish of any presbyter of this Church. I do not think that this case is to be considered or judged upon a mere forced interpretation of a particular canon of the Church. I think this Court, in judging of this case, will attentively regard the whole field of canons which is before them, and will seek to find whether or not there is a great system evidenced by these usages and laws of the Church; whether they are in relation to and in harmony one with the other; whether they are part of one great system, connected, hanging, jointed together, bound into one harmonious whole; and will not seek by a forced interpretation of a single canon, taken from its connection, its context with the others—to bring about a disruption of the whole harmonious fabric. That a head of a parish has some right in regard to the formation of new congregations, an attentive reading of the canon regarding the formation of new congregations will show. He may, as he has often been called upon to do, forbid their formation, where the welfare of the Church does not demand them. He has the control over his parish, so that he can forbid the organization of a parish which he does not see to be necessary in the work of God. If he has control in his parish in this respect, why, he has that control in other respects, especially against intrusion—the intrusion of a stranger who comes in to interrupt his work, and by an occasional service to break the order of the services of the Church. The Church also in her wisdom has provided an appeal. It has happened, perhaps from infirmity, from sickness, or other cause, that ministers, parsons, rectors, where there was a call for the formation of a new congregation, have refused to give their sanction. The law of the Church, then, comes in and gives an adequate remedy. It provides for an appeal to the bishop, so that he may take a case into consideration, and, viewing it upon both sides, may give his decision either for or against.

Now, if the Court please, I will give you another quotation.

A parson has been spoken of. I now quote directly from Blackstone's Commentaries, page 298, vol. i., (marginal paging, 384.) This is chapter eleven, and is entitled, "Of the Clergy." I also quote from Coke upon Littleton, page 300. Blackstone defines a parson, "*Parson—persona ecclesiæ*—is one that hath full possession of all the rights of a parochial church. He is called parson—*per-*

sona—because by his person the Church, which is an invisible body, is represented, and he is in himself a body corporate, in order to protect and defend the rights of the church which he personates by a perpetual succession."

This is the view that I have sought to present to the Court, that this respondent is to be regarded as an officer violating a rule of discipline. In closing these remarks, I would ask to be pardoned a few suggestions in respect to the analogies of every-day life. I think I have shown to this Court satisfactorily that this respondent is to be regarded as an officer. Then let us consider what are the duties and obligations of an officer, as so viewed, not only in the Church but in other professions. We will take the case of a judge; my learned friend (Mr. Fullerton) having occupied that distinguished position will probably be much interested. He, the judge, is either elected, as under our present system, or appointed, as in ancient times. He was appointed not a judge at large. The lowest order of judges in point of dignity, as known in the law, are justices of the peace. They are not justices of peace for the State of New-York; they are justices for the particular district within which they are to act. When we come to the next higher order of judgeship, we find that the county judge is appointed for his county. When we come to the judge of the Supreme Court, we find that he is appointed or elected to his district—his field of labor being defined and connected inseparably with his office. He is not only commissioned as a judge, but as a judge within his defined sphere of action. It would be an unheard-of thing within our judicial annals for one judge to go out of his district, and hold court of his own volition in another judge's district. I do not think any of my learned friends can adduce one instance in legal annals of such an event. He never goes out of his district, unless he is sent by the order of his governor.

Let us take the case of an officer of the army or navy. He is commissioned, and he is sworn. He may be regarded in the light of a more general officer than in the case of a judge; but he is commissioned, he takes an oath, and that oath is, that he will support the constitution of the country whose officer he becomes, and he swears to obey the articles of war—in other words, the discipline of the body or corps to which he is admitted. Now, as to discipline, it is unnecessary for me to speak to this Court, an intelligent body, of the necessity of discipline. We all know that an army could not subsist five minutes without discipline. We all know that an army in which the sense of discipline is lost is the most unreliable of human things. A mob, or a disorganized army, is a terrible object. In its fright it will tear down and destroy. All sense of order being gone,

and each one seeking to save himself, to act for himself, and as he sees best, produces a dreadful condition.

Now, this reverend defendant, when he became an officer of this Church, swore to abide by the articles of its war; his war was the war of his Master on this earth, and to be carried on according to the canons and laws established by the same. Something may be said, and has already been said, by the counsel on the other side, in reference to a distinction that is to be drawn, and can in many instances properly be drawn, between things *mala in se*, and things *mala prohibita*—things evil in themselves, and things only evil because prohibited. It is very true that, in the eye of the human legislator, when he comes to regard the outlying field of law, and to consider from whence law proceeds, that regarding the revealed law of God, the Ten Commandments, as the source of all law, he will make a distinction between those crimes which God has forbidden to be committed and those things which only the human legislature in its wisdom sees fit to forbid. But when a court, sitting, as this Court is, for judgment upon an alleged offense committed against the law, they will see that this rule can not properly be applied to a case of this kind. What the officer does is vastly more important than what the private does. The private may skulk to the rear, may save himself from a threatened death, and he escapes, he is lost in the crowd; but the officer who is appointed to lead, when he seeks to desert, or when he violates discipline or duty, his example becomes an evil of the first character. The evil is not confined to himself. The army is not demoralized by seeing one man who carries a musket desert, but it is demoralized at the sight of one who has sworn to do his duty, and to lead in the van, turning around and abandoning or violating his duty. His example brings about a general panic and condition of disorder in the corps to which he is attached.

I would allude briefly to one or two circumstances connected with this ministration. I refer the Court to the testimony of Rev. Dr. Tiffany, the pastor of St. James's M. E. church. The passage I would quote occurs just before the commencement of our cross-examination. Being asked, "On that Sunday what arrangements were made as to the persons who should officiate and preach?" he replied, "I reached New-Brunswick on Saturday afternoon, the 13th of July, coming to supply the pulpit during the month. On arriving, I was informed by an officer of the church of the respondent's presence in the city, with the intention of officiating and preaching in St. James's M. E. church the next day. I was further informed that he had been invited earlier in the season, a day even having been fixed. Being unable, however, to come, he had now come to spend a few days of his vacation with his parishioners at their summer residence, and I was

sona—because by his person the Church, which is an invisible body, is represented, and he is in himself a body corporate, in order to protect and defend the rights of the church which he personates by a perpetual succession."

This is the view that I have sought to present to the Court, that this respondent is to be regarded as an officer violating a rule of discipline. In closing these remarks, I would ask to be pardoned a few suggestions in respect to the analogies of every-day life. I think I have shown to this Court satisfactorily that this respondent is to be regarded as an officer. Then let us consider what are the duties and obligations of an officer, as so viewed, not only in the Church but in other professions. We will take the case of a judge; my learned friend (Mr. Fullerton) having occupied that distinguished position will probably be much interested. He, the judge, is either elected, as under our present system, or appointed, as in ancient times. He was appointed not a judge at large. The lowest order of judges in point of dignity, as known in the law, are justices of the peace. They are not justices of peace for the State of New-York; they are justices for the particular district within which they are to act. When we come to the next higher order of judgeship, we find that the county judge is appointed for his county. When we come to the judge of the Supreme Court, we find that he is appointed or elected to his district—his field of labor being defined and connected inseparably with his office. He is not only commissioned as a judge, but as a judge within his defined sphere of action. It would be an unheard-of thing within our judicial annals for one judge to go out of his district, and hold court of his own volition in another judge's district. I do not think any of my learned friends can adduce one instance in legal annals of such an event. He never goes out of his district, unless he is sent by the order of his governor.

Let us take the case of an officer of the army or navy. He is commissioned, and he is sworn. He may be regarded in the light of a more general officer than in the case of a judge; but he is commissioned, he takes an oath, and that oath is, that he will support the constitution of the country whose officer he becomes, and he swears to obey the articles of war—in other words, the discipline of the body or corps to which he is admitted. Now, as to discipline, it is unnecessary for me to speak to this Court, an intelligent body, of the necessity of discipline. We all know that an army could not subsist five minutes without discipline. We all know that an army in which the sense of discipline is lost is the most unreliable of human things. A mob, or a disorganized army, is a terrible object. In its fright it will tear down and destroy. All sense of order being gone,

and each one seeking to save himself, to act for himself, and as he sees best, produces a dreadful condition.

Now, this reverend defendant, when he became an officer of this Church, swore to abide by the articles of its war; his war was the war of his Master on this earth, and to be carried on according to the canons and laws established by the same. Something may be said, and has already been said, by the counsel on the other side, in reference to a distinction that is to be drawn, and can in many instances properly be drawn, between things *mala in se*, and things *mala prohibita*—things evil in themselves, and things only evil because prohibited. It is very true that, in the eye of the human legislator, when he comes to regard the outlying field of law, and to consider from whence law proceeds, that regarding the revealed law of God, the Ten Commandments, as the source of all law, he will make a distinction between those crimes which God has forbidden to be committed and those things which only the human legislature in its wisdom sees fit to forbid. But when a court, sitting, as this Court is, for judgment upon an alleged offense committed against the law, they will see that this rule can not properly be applied to a case of this kind. What the officer does is vastly more important than what the private does. The private may skulk to the rear, may save himself from a threatened death, and he escapes, he is lost in the crowd; but the officer who is appointed to lead, when he seeks to desert, or when he violates discipline or duty, his example becomes an evil of the first character. The evil is not confined to himself. The army is not demoralized by seeing one man who carries a musket desert, but it is demoralized at the sight of one who has sworn to do his duty, and to lead in the van, turning around and abandoning or violating his duty. His example brings about a general panic and condition of disorder in the corps to which he is attached.

I would allude briefly to one or two circumstances connected with this ministration. I refer the Court to the testimony of Rev. Dr. Tiffany, the pastor of St. James's M. E. church. The passage I would quote occurs just before the commencement of our cross-examination. Being asked, "On that Sunday what arrangements were made as to the persons who should officiate and preach?" he replied, "I reached New-Brunswick on Saturday afternoon, the 13th of July, coming to supply the pulpit during the month. On arriving, I was informed by an officer of the church of the respondent's presence in the city, with the intention of officiating and preaching in St. James's M. E. church the next day. I was further informed that he had been invited earlier in the season, a day even having been fixed. Being unable, however, to come, he had now come to spend a few days of his vacation with his parishioners at their summer residence, and I was

sona—because by his person the Church, which is an invisible body, is represented, and he is in himself a body corporate, in order to protect and defend the rights of the church which he personates by a perpetual succession."

This is the view that I have sought to present to the Court, that this respondent is to be regarded as an officer violating a rule of discipline. In closing these remarks, I would ask to be pardoned a few suggestions in respect to the analogies of every-day life. I think I have shown to this Court satisfactorily that this respondent is to be regarded as an officer. Then let us consider what are the duties and obligations of an officer, as so viewed, not only in the Church but in other professions. We will take the case of a judge; my learned friend (Mr. Fullerton) having occupied that distinguished position will probably be much interested. He, the judge, is either elected, as under our present system, or appointed, as in ancient times. He was appointed not a judge at large. The lowest order of judges in point of dignity, as known in the law, are justices of the peace. They are not justices of peace for the State of New-York; they are justices for the particular district within which they are to act. When we come to the next higher order of judgeship, we find that the county judge is appointed for his county. When we come to the judge of the Supreme Court, we find that he is appointed or elected to his district—his field of labor being defined and connected inseparably with his office. He is not only commissioned as a judge, but as a judge within his defined sphere of action. It would be an unheard-of thing within our judicial annals for one judge to go out of his district, and hold court of his own volition in another judge's district. I do not think any of my learned friends can adduce one instance in legal annals of such an event. He never goes out of his district, unless he is sent by the order of his governor.

Let us take the case of an officer of the army or navy. He is commissioned, and he is sworn. He may be regarded in the light of a more general officer than in the case of a judge; but he is commissioned, he takes an oath, and that oath is, that he will support the constitution of the country whose officer he becomes, and he swears to obey the articles of war—in other words, the discipline of the body or corps to which he is admitted. Now, as to discipline, it is unnecessary for me to speak to this Court, an intelligent body, of the necessity of discipline. We all know that an army could not subsist five minutes without discipline. We all know that an army in which the sense of discipline is lost is the most unreliable of human things. A mob, or a disorganized army, is a terrible object. In its fright it will tear down and destroy. All sense of order being gone,

and each one seeking to save himself, to act for himself, and as he sees best, produces a dreadful condition.

Now, this reverend defendant, when he became an officer of this Church, swore to abide by the articles of its war; his war was the war of his Master on this earth, and to be carried on according to the canons and laws established by the same. Something may be said, and has already been said, by the counsel on the other side, in reference to a distinction that is to be drawn, and can in many instances properly be drawn, between things *mala in se*, and things *mala prohibita*—things evil in themselves, and things only evil because prohibited. It is very true that, in the eye of the human legislator, when he comes to regard the outlying field of law, and to consider from whence law proceeds, that regarding the revealed law of God, the Ten Commandments, as the source of all law, he will make a distinction between those crimes which God has forbidden to be committed and those things which only the human legislature in its wisdom sees fit to forbid. But when a court, sitting, as this Court is, for judgment upon an alleged offense committed against the law, they will see that this rule can not properly be applied to a case of this kind. What the officer does is vastly more important than what the private does. The private may skulk to the rear, may save himself from a threatened death, and he escapes, he is lost in the crowd; but the officer who is appointed to lead, when he seeks to desert, or when he violates discipline or duty, his example becomes an evil of the first character. The evil is not confined to himself. The army is not demoralized by seeing one man who carries a musket desert, but it is demoralized at the sight of one who has sworn to do his duty, and to lead in the van, turning around and abandoning or violating his duty. His example brings about a general panic and condition of disorder in the corps to which he is attached.

I would allude briefly to one or two circumstances connected with this ministration. I refer the Court to the testimony of Rev. Dr. Tiffany, the pastor of St. James's M. E. church. The passage I would quote occurs just before the commencement of our cross-examination. Being asked, "On that Sunday what arrangements were made as to the persons who should officiate and preach?" he replied, "I reached New-Brunswick on Saturday afternoon, the 13th of July, coming to supply the pulpit during the month. On arriving, I was informed by an officer of the church of the respondent's presence in the city, with the intention of officiating and preaching in St. James's M. E. church the next day. I was further informed that he had been invited earlier in the season, a day even having been fixed. Being unable, however, to come, he had now come to spend a few days of his vacation with his parishioners at their summer residence, and I was

sona—because by his person the Church, which is an invisible body, is represented, and he is in himself a body corporate, in order to protect and defend the rights of the church which he personates by a perpetual succession."

This is the view that I have sought to present to the Court, that this respondent is to be regarded as an officer violating a rule of discipline. In closing these remarks, I would ask to be pardoned a few suggestions in respect to the analogies of every-day life. I think I have shown to this Court satisfactorily that this respondent is to be regarded as an officer. Then let us consider what are the duties and obligations of an officer, as so viewed, not only in the Church but in other professions. We will take the case of a judge; my learned friend (Mr. Fullerton) having occupied that distinguished position will probably be much interested. He, the judge, is either elected, as under our present system, or appointed, as in ancient times. He was appointed not a judge at large. The lowest order of judges in point of dignity, as known in the law, are justices of the peace. They are not justices of peace for the State of New-York; they are justices for the particular district within which they are to act. When we come to the next higher order of judgeship, we find that the county judge is appointed for his county. When we come to the judge of the Supreme Court, we find that he is appointed or elected to his district—his field of labor being defined and connected inseparably with his office. He is not only commissioned as a judge, but as a judge within his defined sphere of action. It would be an unheard-of thing within our judicial annals for one judge to go out of his district, and hold court of his own volition in another judge's district. I do not think any of my learned friends can adduce one instance in legal annals of such an event. He never goes out of his district, unless he is sent by the order of his governor.

Let us take the case of an officer of the army or navy. He is commissioned, and he is sworn. He may be regarded in the light of a more general officer than in the case of a judge; but he is commissioned, he takes an oath, and that oath is, that he will support the constitution of the country whose officer he becomes, and he swears to obey the articles of war—in other words, the discipline of the body or corps to which he is admitted. Now, as to discipline, it is unnecessary for me to speak to this Court, an intelligent body, of the necessity of discipline. We all know that an army could not subsist five minutes without discipline. We all know that an army in which the sense of discipline is lost is the most unreliable of human things. A mob, or a disorganized army, is a terrible object. In its fright it will tear down and destroy. All sense of order being gone,

and each one seeking to save himself, to act for himself, and as he sees best, produces a dreadful condition.

Now, this reverend defendant, when he became an officer of this Church, swore to abide by the articles of its war; his war was the war of his Master on this earth, and to be carried on according to the canons and laws established by the same. Something may be said, and has already been said, by the counsel on the other side, in reference to a distinction that is to be drawn, and can in many instances properly be drawn, between things *mala in se*, and things *mala prohibita*—things evil in themselves, and things only evil because prohibited. It is very true that, in the eye of the human legislator, when he comes to regard the outlying field of law, and to consider from whence law proceeds, that regarding the revealed law of God, the Ten Commandments, as the source of all law, he will make a distinction between those crimes which God has forbidden to be committed and those things which only the human legislature in its wisdom sees fit to forbid. But when a court, sitting, as this Court is, for judgment upon an alleged offense committed against the law, they will see that this rule can not properly be applied to a case of this kind. What the officer does is vastly more important than what the private does. The private may skulk to the rear, may save himself from a threatened death, and he escapes, he is lost in the crowd; but the officer who is appointed to lead, when he seeks to desert, or when he violates discipline or duty, his example becomes an evil of the first character. The evil is not confined to himself. The army is not demoralized by seeing one man who carries a musket desert, but it is demoralized at the sight of one who has sworn to do his duty, and to lead in the van, turning around and abandoning or violating his duty. His example brings about a general panic and condition of disorder in the corps to which he is attached.

I would allude briefly to one or two circumstances connected with this ministration. I refer the Court to the testimony of Rev. Dr. Tiffany, the pastor of St. James's M. E. church. The passage I would quote occurs just before the commencement of our cross-examination. Being asked, "On that Sunday what arrangements were made as to the persons who should officiate and preach?" he replied, "I reached New-Brunswick on Saturday afternoon, the 13th of July, coming to supply the pulpit during the month. On arriving, I was informed by an officer of the church of the respondent's presence in the city, with the intention of officiating and preaching in St. James's M. E. church the next day. I was further informed that he had been invited earlier in the season, a day even having been fixed. Being unable, however, to come, he had now come to spend a few days of his vacation with his parishioners at their summer residence, and I was

told they would be gratified to have him officiate and preach the next day. Learning this, I called on the respondent at the residence of Mr. Christopher Meyer. So far as I had any authority, I tendered him the use of St. James's church the next day——"

To do what?

"To hold such services as he might please." To hold such services as he (the respondent in this case) might please! Now, what did it please the respondent to do? I speak of this merely as a circumstance illustrating the case. He did, during the usual hours of divine service, according to the Episcopal Church, within a stone's throw of the rectory of Christ Church, enter into the place of worship of the Methodist Church, situated about 1700 feet from Christ Church, and there, in company with Rev. Dr. Tiffany, he proceeded to perform a service which the witnesses have characterized to you. That it was not the service of the Protestant Episcopal Church does not require any argument at my hands. It was a service in part. It approximated toward a service, but it was partly carried on from the Book of Common Prayer, altered, as two witnesses state—altering the absolution, and making it a prayer, in connection with the Lord's Prayer, and partly carried on by the intervention or means of the manual or book used in that particular congregation. He had an opportunity, according to the testimony of the Rev. Dr. Tiffany, of celebrating the divine worship of God according to the laws and usages of the Protestant Episcopal Church, and on that occasion he did not so perform that service; but on the contrary, he performed another service, and one unknown to his Church. I brought out on cross-examination the further fact (not that I think much or great stress need be laid upon the same, but still as illustrating the case) that this reverend respondent did not appear either in surplice or gown, which is, to say the least, according to the usage of our Church. I do not suppose that censure should needlessly be cast upon this gentleman for the non-use of these robes; but still it is a circumstance, taken in connection with the other circumstances of the case, which may have its weight and importance.

I shall content myself with simply reading the canon of this Church, which we claim has been violated by the respondent, in connection with the argument I have made, leaving it to my learned associate to elucidate the same. This is the canon on which the respondent is presented:

"No minister belonging to this Church shall officiate, either by preaching, reading prayers, or otherwise, in the parish or within the parochial cure of another clergyman, unless he have received express permission for that purpose from the minister of the parish or cure,

or, in his absence, from the church-wardens and vestrymen, or trustees of the congregation, or a majority of them.

"Where parish boundaries are not defined by law, or are not otherwise settled, they shall, for the purposes of this section, be defined by the civil divisions of the State as follows: Parochial boundaries shall be the limits, as now fixed by law, of any village, town, township, incorporated borough, city, or the limits of some division thereof which may have been recognized by the bishop, acting with the advice and consent of the standing committee, as constituting the boundaries of a parish.

"If there be but one church or congregation within the limits of such village, town, township, borough, city, the same shall be deemed the parochial cure of the minister having charge thereof."

That is, the city shall be deemed the parochial cure of the minister having charge thereof.

"If there be two or more congregations or churches therein, it shall be deemed the cure of the ministers thereof; and the assent of a majority of such ministers shall be necessary."

One of the witnesses for the defense, the Rev. Dr. Tyng, has given his definition of what he considers a parish, stating that, even if a school-house leaned and rested against the edifice of St. George's Church, and that a minister of the Protestant Episcopal Church came into that school-house and there officiated, he should not consider it an intrusion upon his parish. That is a very restrictive view of a parish, and I submit, with all respect to this Court, not the view you can take of it. He abnegates his authority as conferred upon him by law and the Church. He is the overseer, or supervisor, or, as the law terms him, the rector or governor of his parish and in a certain sense responsible for its good order and the worship carried on in it.

Many persons are apprehensive for the safety of republican government, taking their stand-point of view from the city of New-York. When they look at the well-known corruptions, disorders, and dishonesties that are exhibited from day to day in this city, they lose faith in a republican form of government. That is because they limit their view to the city; they do not cast their eye out abroad to the whole surface of the land. They do not regard the action of our churches and our schools and the free intercourse in God's healthful air of the country, in the bringing up and educating the large body of citizens who control our destinies and the welfare of the country. They look simply at the city, and in so doing they limit their vision to a very small compass, and the judgment that they form is correspondingly cramped and narrow. Looking out upon the various parishes of the Protestant Episcopal Church, we may well see that this definition of a parish claimed by the respondent, would not be

suitable; it might perhaps be more applicable in a large city like New-York; but it is not the definition for a city, where according to the canon of the Church, two ministers of the Church are only resident.

I hardly deem it necessary, but still at the close of my argument I ask leave to read the 34th Article of Religion: "It is not necessary that traditions and ceremonies be in all places one, or utterly like; for at all times they have been divers, and may be changed according to the diversity of countries, times, and men's manners, so that nothing be ordained against God's word. Whosoever, through his private judgment, willingly and purposely, doth openly break the traditions and ceremonies of the Church, which be not repugnant to the word of God, and be ordained and approved by common authority, ought to be rebuked openly, (that others may fear to do the like,) as he that offendeth against the common order of the Church and hurteth the authority of the magistrate, and woundeth the consciences of the weak brethren.

"Every particular or national church hath authority to ordain, change, and abolish, ceremonies or rites of the Church, ordained only by man's authority, so that all things be done to edifying."

If it is designed by any person within the great body of the Protestant Episcopal Church to work a change in this canon, under which the presentment is made, the proper course will be for them to send their delegates to the General Convention of the Protestant Episcopal Church, therein to set forth and show their reasons for the change sought to be introduced; and if that body, having charge of the formation of the canon of the Church, the addition of new and the amendment of old, see fit, they can secure the change that they desire. But they can not do it in the mode which they have seen fit to adopt.

ARGUMENT OF MR. PARKER.

May it please the Court: When we consider the nature of the charge which this respondent meets here, we can not be surprised at the interest which in this case pervades the public mind, which from day to day has crammed this little house, and which has elevated this Court, and all who take part in these proceedings, into the gaze of all men. No other case with which I have ever been acquainted, has had so great a hold upon the minds of the public, in and out of the Church, as this which we are now trying; and it seems to me that that is not to be wondered at. What is this respondent charged with? He is a minister of the Gospel. Is he charged with any offense against the law of God or the laws of society? Is he charged with

having said or done any thing injurious to the cause of the Gospel, or to the Church; or even injurious to the clergymen who complain of him? The charge is that, being a minister of the Gospel, he preached the Gospel; that, being a minister of the Church, he preached the Church; that he carried it, with its incomparable Liturgy, to those who but for him had it not, or at least had it not in the perfection in which he placed it before them. And although he was compelled, by the necessities of the occasion, not to ask responses from those who had no books with which to make them, and even to omit the Litany, which he would have loved to use before that or any other congregation that might assemble, although compelled to make these omissions from want of the aids to those devotions which the presence of the Book of Common Prayer among our own congregations gives, yet he did not violate the canon to which the learned gentleman who has just closed, (Mr. Logan,) alluded; he obeyed it—he used the Book of Common Prayer. Take the language of the canon, and analyze it as you will, he performed every thing that was incumbent upon him. Ay, it is for preaching the Gospel, and for carrying the Church with him and preaching it, that he stands now before this Court and the country an accused instead of an applauded man. (Applause.) And all the harm that he has done, all the offense he has committed, is that he did not preach the Gospel and the Church with the consent of Rev. Dr. Stubbs, or of the Rev. Dr. Boggs (laughter)—gentlemen who know that when I mention their names I do it with no disrespect. They are my friends. I can truly say that I love them personally; but I can likewise say that I think they have here committed a grand ecclesiastical blunder. I can say that to them as churchmen and as men of the Gospel. Had they, instead of taking this course, aided Mr. Tyng in carrying their Church to that congregation of Methodists—ay, aided him, even if they thought that he might be able to do it every Sunday of his life, what would have been the result? Might it not have been the bringing of a whole congregation at once into the fold which they and we regard as the true fold of Christ? We are not informed upon what topic the respondent preached in that Methodist church. It may be that he preached the Church directly; that he advocated its form of church government; that he quoted to those Episcopal Methodists, Wesley, their great founder; that he implored them to return to the ark from which they had gone out; that he taught that it was their duty to leave the church in which they worshiped, and to go to the churches of these very complainants, and follow their teachings. (Laughter.) In the absence of any proof on the part of the learned presentors, as to what was said by the respondent on that occasion, we have a right to regard this topic as more consonant with his duty

than any other, and to insist that he stands here on trial, entitled to the presumption that he did all that it was his duty and that he thought it was best to do. That would be the presumption of charity, and it is also the presumption of law. This is a criminal court; you are here administering penal law; and the accused has a right to every presumption in favor of his innocence; and this Court is to regard him as having done in that Methodist church just what the most righteous, the most eloquent, the most judicious man could have done. They are right in concluding, at any rate, that, according to his means and his ability, he did, then and there, all he could for Christ and His Church. But all this makes no difference. The charge still comes back: "You did this without first obtaining the express permission of these two clergymen, and therefore you are an ecclesiastical felon!" The Episcopal Church in the United States was organized in 1786. From that time to this, no tribunal has been convened to try a man for offending against this canon, whose case was like this. No wonder that the community stand puzzled, if not amazed. Can they believe the thing in earnest? Punish a minister for preaching the Gospel! Punish an Episcopalian for carrying his Prayer-Book to a congregation of Methodists—a spot where the Liturgy in its perfection is welcome only as a guest, and not as a daily companion! I wish to fasten the attention of the Court upon this peculiarity of the offense charged—that it is one which has no possible bad motive—no motive of injury to another—no motive of interfering with another, or with his rights. Messrs. Stubbs and Boggs had no right to preach to that Methodist congregation, or to officiate in that church. Had they gone there and endeavored to exercise their office as they do in their own parishes, the law of the land would have ejected them. They could go anywhere else in the city except in such places, and rightfully exercise their office. They could stand in the open air and preach and pray, and do it of right. But here, within this one hundred feet square, they could not go, except by invitation. Hence, no right of theirs was interfered with. And the construction of the canon asked for by the presentors is that, though they had no right which was interfered with, a brother minister could not accept the invitation of those who had the control of that spot, and go there and exercise his right—rather say, perform his duty of preaching the everlasting Gospel in that church, without "their express permission." I make these general remarks in the outset of this discussion not without design. They contain the kernel of my view of the defense. We say that, though the letter of this canon may cover the act charged, yet correct interpretation will not include it; that the canon was designed to prevent no such conduct; that it was passed to protect the clergy and the Church from

injurious rivalry, invasion, and interference—injurious to the clergy by robbing them of their flocks and of their scanty income; injurious to the Church by dividing the exertion of its strength. We say that any other interpretation will stultify the legislation of the Church; will impose penalty where the desert is reward; will make the Church, whose only office is the preaching of the Gospel, restrain that preaching simply for the sake of doing so. Before proceeding to discuss the subject at large, I wish to say a word or two on a topic hinted at, and respecting which some harsh things have been said—I was going to say almost the only harsh things that have fallen from the very courteous and dexterous counsel on the other side, in regard to the respondent—I mean the charge of discourtesy. And my first observation is, that this charge has nothing to do with the case. The canon was not passed to favor professional etiquette. Such a motive seems to be preposterous. No laws of the land have any such motive; and the laws of the Church—a body existing for the protection of the highest interests of man—are prompted by reasons of more consequence than the preservation of simple politeness between one minister and another. The only motive rightly to be assumed as actuating the legislation of the Church, is the preaching of the glad tidings, and, next to that, the dissemination of the Church's shapely scheme of doctrine, and the increasing of the love and regard of all men for what we deem her incomparable Liturgy. Professional politeness! The Church of the living God pass solemn canons in order to humor the whims and follies of such ministers as make much of personal dignity, and are thinking not what is due to the Gospel, but what is due to themselves! The simple supposition, it seems to me, insults the dignity of a Church whose formulas blaze with Jesus Christ and Him crucified, and in whose sight ministers are little—the spread of the Gospel every thing!

My second remark is, that courtesy to another, though most commendable and desirable, is not the highest duty. The first, last, perpetual duty of God's minister is to preach the Gospel. He is not a true minister—has not risen to a right estimate of his calling—who has not ever sounding in his ears and beating in his heart the thrilling words, "Woe is me if I preach not the Gospel!" If any souls desire the Gospel at his mouth, he is called to them, just as Peter was when praying on the house-top. And even had the respondent applied, as it seems courtesy would dictate, to the reverend clergy of New-Brunswick for permission to officiate for the congregation which invited him, and been refused, I hold it would still have been his duty, with his view of the canon in question, to go there and preach the Gospel; and I hold that he takes the right view of the canon. Did his Saviour stand on ceremony when invited to the

synagogue? But let me further remark, it was not Mr. Tyng but Dr. Stubbs who was discourteous, if there was want of courtesy anywhere. Mr. Tyng was on his vacation. This congregation was without a pastor. A leading member of it was a parishioner of Mr. Tyng, resident half the year here. Mr. Tyng was asked to preach to this people. The able advocate for the presentors (spite of his disavowal) imputes to Mr. Tyng a motive of which he is incapable—one, certainly, of which he ought to be—and therefore one which no man has the right to impute to him. Not because he had an itching tongue, but because he deems preaching God's word his duty, did he go. He was, it seems, advertised. This was none of his doing, nor did he know it. Now, what was Dr. Stubbs's duty? To complain of him forthwith to the bishop? to send him his sexton with a note forbidding him, after he knew this arrangement had got publicity, and when Mr. Tyng could not, with his views of his rights and his duties, withdraw—when no man could have withdrawn?—then to leave his own parish and go to Princeton, out of the reach of explanation or remonstrance? Or was it not his duty personally to visit this reverend brother, with whom he had had a "very friendly conversation," (laughter,) learn how it was he was there, expostulate with him, if need be, as friend with friend and one servant of Christ with the other, and see if they could not agree on the proper course, under the circumstances, to be adopted? This is what I think he ought to have done—what the spirit of the Gospel required; and had he done this; had he heard from Mr. Tyng how the visit occurred; that he had no idea that the canon required consent; that his sole desire was to do his duty; that, advertised as he was, he could not withdraw, I know that my excellent friend, Dr. Stubbs, would have gone to my other friend, Dr. Boggs, and said, "Let him go on; it may save souls; it may even increase the Church; at any rate, accidents have made it impossible for him not to go on." And so they would have saved this trial, and "done unto others as they would should be done unto them;" and so this respondent would have been allowed quietly to serve the Church, and Dr. Stubbs, and the Gospel, all at once. (Laughter and applause.) With these preliminary remarks, I come directly to the subject in hand. The question before the Court is not one of fact. It is not whether the act described in the specification was committed by the respondent, nor whether, in the mode of committing it, he erred, but whether, if it were, the *charge* is proved. It is a question of law, not of fact. We deny breaking the canon by what we did, and the Court is to say whether our conduct is a breach of it. In other words, they are to expound and construe this canon, and to determine what is its meaning. I need not say that this is a most responsible duty. It is the

first time in seventy-five years, so far as I am informed, that such an exposition as is here sought for was ever asked by any one, of any organized tribunal. That conduct exactly like that of the respondent has often occurred, must be admitted. The well-known case of the late Dr. Johns, in Baltimore, is one that occurs to me—notable because it was not neglected, but was sought to be prevented, and his conduct reprehended by his diocesan in another way.

The facts attending that case were these: Dr. Johns was advertised, or somehow announced to be about to preach to a Methodist congregation. Bishop Whittingham thought he had better not. Under his views of what was his duty, the Bishop addressed a note to Dr. Johns, remonstrating with him and calling on him to obey the godly admonitions of his diocesan. Dr. Johns thought that his rights were different from what the Bishop thought they were, and insisted upon performing what he thought his duty, by preaching to that congregation, and did so. Then the matter came before the Standing Committee—brought there by the Bishop. That committee never presented it. The facts were all before them. It was just such another case as this, the offense, however, being accompanied with the additional fault of disobedience, or disrespect, if you please, to the Bishop's view. The matter was the subject of debate in the convention. The report of the Standing Committee was against Dr. Johns, but they never prosecuted him. That case is the nearest that such a matter has ever come to a trial, so far as I am advised, with the solitary exception of the case of the Rev. Dr. Tyng, mentioned in his evidence last evening—a case to which I allude because it seems to me so beautifully to illustrate the want of applicability of this canon, the absurdity—perhaps I am justified in using so strong a term—of construing the canon in such a way as to prohibit an act like that. Dr. Tyng was a visitor at Schooley's Mountain; and about three miles off from the mountain, at Hackettstown, an effort was then made (which, I believe, is still nothing more than an effort, if it be even that) to build an Episcopal church. There was a missionary there in the town, who was in the habit of holding services at times at the Heath House. Dr. Tyng was a guest at that house. He received an invitation, as he states, coming from and through this other clergyman, to preach at that house; but, after that invitation and the express permission thus given, the clergyman, for some reason, moved his quarters, and said that the services must be held at Belmont Hall, and not at the Heath House.

Now, here at once is raised another question. Express permission having been granted, can it or not be withdrawn? How long does the power of the man who is to say whether another minister is to officiate or not, to continue? Can he come in while the other

minister is actually officiating and say, "I withdraw my permission"? If not, why not? For every syllable that is uttered is an "officiating"—a reading of prayers or preaching. This seems a necessary consequence from the construction of the canon that is called for by the presentors here; but it all melts into thin air before what we hold to be the proper construction of the canon.

That case came before the Standing Committee, and there was an end of it—it never came to trial.

Other cases are well known to the numerous clergymen before me. I need but refer for an instant to the evidence of Dr. Muhlenberg, to that of Dr. Newton; indeed, to the evidence of nearly all the witnesses examined here, for instances of conduct similar to this; and, had we had opportunity, at least one Right Reverend Bishop of the Church, one of the oldest, one of the most revered, might have been brought here to say exactly what they said. Numbers of such cases have occurred, and yet this is the first trial for an offense of this sort. Nay, it is even said that there are known to different members of this Court cases where the same sort of conduct was sought to be prosecuted as uncanonical, but was, after application to proper authority, not even presented. If all this be true, the importance of the present occasion and the responsibility of this Court are much enhanced, while a powerful argument for the respondent springs up at the very outset. How can what he has done be contrary to the canon when, for seventy-five years, though often done before, not even has a court met to try an alleged offender?

The question, I repeat, is one of law only. And it is the task of this Court to expound that law. It is to be regretted that its exposition must necessarily be so wanting in authority. Not even in this diocese can it be a completely controlling precedent. There is no court ecclesiastical who can establish a law by precedent. And hence results a propriety which I would most respectfully urge, that the leaning of this tribunal should be strongly toward an acquittal; since, as the canon is one of the whole Church, the unseemly sight may be presented that what is crime in New-Jersey should be virtue in Massachusetts or Virginia. And if such a thing be possible, it were best to give the respondent the benefit of doubts, and let the General Convention, ere long to convene, put all question on this subject to rest.

I remark, then, as a first proposition, that the canons in question can not have such an interpretation as to extend to all cases within their words. Consider the words of the law. They refer, first to certain acts to be done; second, to a consent, the want of which criminates those acts. What acts? "No minister shall officiate either by preaching, [illegible]ding prayers, or otherwise." The acts are

rea[illegible]

criminal, not because of the protest of the resident clergyman, but because of the want of their express permission; and, therefore, if the evidence given here of protest was relevant at all, it was only as a portion of the circumstances, and, perhaps, in aggravation of the offense. "Preaching" is "proclaiming;" "publishing in religious discourses;" "pronouncing a public discourse on a religious subject." "What ye hear in the ear, that preach ye on the house-tops." That is, proclaim it. "The Lord hath anointed me to preach good tidings to the meek," said Isaiah. "Then Philip (seated by the eunuch) began at the same Scripture, and preached unto him Jesus." "He preached to the spirits that were in prison." It may be in public or private. It may be of Christ, or any thing religious. It may be to a congregation or one individual. The Christian religion covers all moral duties. A lecture on temperance, on obedience to lawful authority, on truthfulness, on church government, on the life of Christ, on Paul, on Peter, on Popery, or Methodism, whether on Sundays or week-days—all is preaching. Does this Court believe that all this is forbidden by this canon? So, again, with "reading prayers." What prayers? When? How? Where? A minister "reads prayers" in my family. Does he not "officiate" by "reading prayers"? Or, on a sudden emergency, when solemnity oppresses a crowd, he says, "Let us pray," and he repeats the prayers of the Church; or, kneeling beside a sufferer on a railroad train, he commends his soul to God; or, called on at a charity, he invokes God's favor; or, at the commencement of a college, or at the meeting of a legislature or a convention, or on a visit to some jail or almshouse, does he not officiate?

Later canons increase the force of this opening remark. As the law now stands, every single act coming within the literal meaning of the words used is unlawful unless the minister performing it has received express permission for that purpose from the minister of the parish or cure; and when parish boundaries are not defined by law, or settled by diocese authority, they shall, for the purpose of this section, it is claimed, be defined by the civil divisions of the State—namely, cities, villages, etc.—and if there be two or more congregations therein, such shall be deemed the cure of the ministers thereof, and the consent of the majority of such ministers shall be necessary. Enforce this canon literally, and observe the absurdities it requires. Dr. Stubbs is invited to preach here next Sunday. Before doing so, will he obtain the express permission of a majority of all the ministers of the Church resident in the city of New-York? If not, will he be presented? Dr. Stubbs may be acceptable to some congregation here who seek a clergyman, either as a supply or a rector; will he get the express permission of a majority of the clergymen of the

Church in the city of New-York, before he accepts the invitation? If not, is he not a criminal? Should one of this reverend Court be invited by either of the others to officiate for him next Sunday, could he do it without the express permission of a majority? In New-Brunswick, Drs. Stubbs and Boggs are the only ministers of this Church. One of them wishes one of this Court to preach for him; can he lawfully do it unless the other likewise consent? One of you has a brother, perhaps, resident in New-Brunswick. He falls sick, desires your services. You long to give them; must you not first run to the houses of Messrs. Stubbs and Boggs and get their express permission? (Laughter.) I don't wonder at the laugh.

The CHAIRMAN. Nor do I wonder at it; but I wish that we might have better order in the Court.

Mr. PARKER. I do not wonder at the laugh, and I am pleased that the Chairman agrees with me. (Laughter.) I am sure he can not but see that when a literal interpretation is given to this canon, it is sheer nonsense. (Renewed laughter.) Or, perhaps, you have a sister there who belongs to the Methodist denomination, and who is about to be married; she desires you to join her in holy matrimony; must you first get the express permission of Messrs. Stubbs and Boggs? Or, suppose a marching regiment stops in New-York, its chaplain an Episcopal minister. Can he officiate as required by his military duty without consent of the majority? Or, suppose the chaplain of Fort Hamilton is of the Church. He has no parish. The parish is the township, and there is a church. Must he have the express permission of the minister of that church to do his duty? Or, if the respondent were elected chaplain of Congress, or requested to officiate there, (as I believe he has done since this proceeding began,) or at Albany were asked to "officiate" in the Legislature, could he do it unless he first got permission? You can not say that these acts would never be reprehended. If the canon is to be literally enforced, they break it; and if they do, they ought to be reprehended. You can not say that no court would convict in such cases; that is nothing but saying, if the literal interpretation be true, that the Court would depart from their duty. What will you say? Especially in such cases as these supposed, when the army regulations and the duties of a chaplain require performance of official services by an Episcopal minister, will you not say that the civil power here intervenes, and takes the place where he officiates, for the time being, out of the "parish or cure" of the resident clergyman? Certainly it does. Whatever the canons say, the law of the land forcibly intervenes and makes the hundred or four hundred feet square wherein the chaplain officiates, no part of the parish. And so, we contend, that the occupation of the spot of ground where the Methodist

church stands, forcibly snatches so much from the bounds of the "parish," and that officiating there is not uncanonical. The law makes that the ecclesiastical property of others, and the canon can not be interpreted so as to override the law; nay, the canon must be interpreted in consonance with the law.

This much I will say, on this review of the canon, no rational mind can ever believe that the law-making power meant this canon to be applied literally according to the full extent of the words used. Can I not say that? I know I have prejudices to assail, prejudices of a long life; prejudices that are not peculiar in this place, but are largely shared elsewhere; prejudices that are natural—it is so easy to say and to think, "Here are the words: what more do you want?" But there are many cases (I shall have the pleasure of showing some of them to this honorable Court) where it is decided that that is not a sufficient rule of interpretation, and that you do want a good deal more than the words in order to determine the meaning of the law, and whether an offense has been committed.

I proceed to say, under the second general head of remark, the principles of law, acknowledged everywhere, require that, in enforcing this canon, its words must be restricted from their general signification, and bear a construction according to the intent of its makers. I invoke here the following rules, well known to the profession, and to those who, in some respects, are almost above the profession, statesmen, ministers plenipotentiary, and treaty makers: 1. Penal statutes must be construed strictly; 2. Laws must be interpreted so as not to impute absurdity to a legislature; 3. Laws must not be interpreted so as to cause the legislature to make a laudable act, or one not *per se* reprehensible, criminal; 4. The laws of a church must be interpreted so as to attain her ends—the Gospel's and her own extension; 5. The letter of the law must be so enlarged as to reach the mischief it seeks to remedy, or restrained so as not to make that penal which is not within such mischief.

I must beg the attention of the Court, even at the risk of wearying them somewhat, while I read some authorities on this subject. I quote from Vattel's rules of construction, found in Sedgwick on Statutes, from page 266 to page 310—though I am not going to read all that. (Laughter.)

"*Restrictive interpretation*, which is the reverse of extensive interpretation, is founded on the same principle. As we extend a clause to those cases which, though not comprised within the meaning of the terms, are nevertheless comprised in the intention of that clause, and included in the reasons that produced it, in like manner we restrict a law or promise, contrary to the literal signification of the terms—our judgment being directed by the reason of that law or that

promise; that is to say, if a case occurs to which the well-known reason of a law or promise is utterly inapplicable, that the case ought to be excepted, although, if we were barely to consider the meaning of the terms, it should seem to fall within the purview of the law or promise.

"It is impossible to think of every thing, to foresee every thing, and to express every thing; it is sufficient to enounce certain things in such a manner as to make known our thoughts concerning things of which we do not speak; and, as Seneca, the rhetorician, says, there are exceptions so clear that it is unnecessary to express them. The law condemns to suffer death whoever strikes his father: shall we punish him who has shaken and struck his father to recover him from a lethargic stupor? Shall we punish a young child, or a man in a delirium, who has lifted his hand against the author of his life? In the former case, the reason of the law does not hold good; and to the two latter, it is not applicable.

"We have recourse to restrictive interpretation in order to avoid falling into absurdities. A man bequeaths his house to one, and to another his garden, the only entrance into which is through the house. It would be absurd to suppose that he had bequeathed to the latter a garden into which he could not enter; we must therefore restrict the pure and simple donation of the house, and understand that it was given only upon the condition of giving a passage to the garden.

"When a case arises in which it would be too severe and too prejudicial to any one to interpret a law or a promise according to the rigor of the terms, a restrictive interpretation is then also used, and we except the case in question, agreeably to the interpretation of the legislature, or of him who made the promise; for the legislature intends only what is just and equitable; and, in contracts, no one can enter into such engagements in favor of another as shall essentially supersede the duty he owes to himself.

"We have said above that we should take the expressions in the sense that agrees with the subject or the matter. Restrictive interpretation is also directed by this rule. If the subject or the matter treated of will not allow that the terms of a clause should be taken in their full extent, we should limit the sense according as the subject requires. Let us suppose that the custom of a particular country confines the entail of fiefs to the male line, properly so called; if an act of enfeoffment in that country declares that the fief is given to a person for himself and his male descendants, the sense of these last words must be restricted to the males descending from males; for the subject will not admit of our understanding them also of males who are the issue of females, though they are reckoned among the male descendants of the first possessor.

"When the provisions of a law or a convention are plain, clear, determinate, and attended with no doubt or difficulty in the application, there is no room for any interpretation or comment. The precise point of the will of the legislature, or the contracting parties, is what we must adhere to. But if their expressions are indeterminate, vague, or susceptible of a more or less extensive sense—if that precise point of their intention can not, in the particular case in question, be discovered and fixed by the other rules of interpretation—we must presume it, according to the laws of reason and equity; and for this purpose it is necessary to pay attention to the nature of things to which the question relates. There are certain things of which equity admits the extension rather than the restriction; that is to say, that, with respect to those things, the precise point of the will not being discovered in the expressions of the law or the contract, it is safer, and more consistent with equity, to suppose and fix that point in the more extensive than in the more limited sense of the terms—to give a latitude to the meaning of the expressions, than to restrict it. These are the things called favorable; odious things, on the other hand, are those of which the restriction tends more certainly to equity than the extension. Let us figure to ourselves the intention or the will of the legislature, or the contracting parties, at a fixed point. At that point precisely should we stop, if it be clearly known; if uncertain, we should, at least, endeavor to approach it. In things favorable, it is better to pass beyond that point than not to reach it; in things odious, it is better not to reach it than to pass beyond it.

"On the other hand, let us consider as odious every thing that is, in its own nature, rather injurious than useful to mankind. Those things which have a tendency to promote peace, are favorable; those that lead to war are odious.

"Every thing that contains a penalty is odious. With respect to the laws, it is universally agreed that, in case of doubt, the judge ought to incline to the merciful side; and that it is indisputably better to suffer a guilty person to escape. Penal clauses, in treaties, lay a burden upon one of the parties; they are, therefore, odious.

"A degree of odium always attaches to penalties; they may, however, be viewed in a favorable light, on those occasions when they are particularly necessary for the safety of society."

I call the attention of the Court now to other passages from this same book in relation to criminal statutes:

"Sec. 5. If, however, the severity of the law is not a necessary and indispensable part of it, but it can be carried into effect by a milder interpretation and one more conformable to equity and natural justice, then this is to be preferred to the strict and harsh construction.

"Sec. 6. It follows from the preceding rules, that we can not declare as a fixed and invariable rule, either that the strictness of law is to be followed against a more equitable interpretation, or the reverse. Rigor becomes injustice when the law will bear an equitable interpretation; rigor should be practised when an equitable interpretation would defeat the law. Thus rigor or strictness is either an unjust and odious severity, contrary to the spirit of the law, or it furnishes a just but inflexible rule. These two ideas are never to be confounded; and the strict or the equitable construction ought to be adhered to according to the rules here given.

"Sec. 14. Laws, which favor what public utility, humanity, religion, freedom of intercourse, (*liberté des conventions*,) and other similar interests regard favorably, as well as those intended to favor particular individuals, ought to be interpreted with all the liberality to which these interests are justly entitled, in an equitable point of view, and ought not to be interpreted severely, nor be applied in a manner calculated to prejudice the persons intended to be favored.

"Sec. 15. Laws, which restrain natural liberty, as those which prohibit what is not of itself illicit, or which derogate otherwise from common right; laws fixing the punishment of crimes and offenses, or penalties in matters of a civil nature which prescribe formalities that seem severe; those which permit parents to disinherit children, and others of a similar character—ought to be so interpreted as not to extend their provisions to cases which they do not embrace; and, on the contrary, they should receive all practical mitigation of equity and humanity.

"Sec. 16. If any law or custom is established for particular reasons, contrary to other rules or to common right, it ought not to be applied except to those cases for which it was expressly intended.

"Sec. 19. If the doubts or difficulties in regard to the interpretation of a law or a custom are solved by an old usage which has fixed the meanings, and which is supported by a uniform series of adjudications, we should adhere to the usage, which is the best interpreter of laws."

The reason of the law or of the treaty—that is to say, of the motive which led to the making of it, and the object in contemplation at the time—is the most certain clue to lead us to the discovery of its true meaning; and great attention should be paid to the circumstance whenever there is question either of explaining an obscure, ambiguous, indeterminate passage in a law or treaty, or of applying it to a particular case. When once we certainly know the reason which alone has determined the will of the person speaking, we ought to interpret and apply his words in a manner suitable to that reason alone.

But it is a dangerous abuse to go, without necessity, in search of motives and uncertain views, in order to wrest, restrict, or extend the meaning of a deed which is of itself sufficiently clear, and carries no absurdity on the face of it.

"Acts of Parliament," says Lord Coke, "are to be so construed as no man that is innocent and free from injury or wrong, be by a literal construction punished or endangered." So in Maryland, it has been said that the intent and meaning of the makers should be followed, although it may seem to be contrary to the letter of the statute. "The words of an act," says the Supreme Court of the same State, "may be disregarded when that is necessary to arrive at the intention of the law-makers, but not where the act admits of only one interpretation." So, too, in New-York, it has been said, "that such a construction ought to be put upon a statute as may best answer the intention the makers had in view; and the intention is sometimes to be collected from the cause or necessity of such statute, and sometimes from other circumstances; and whenever such intention can be discovered, it ought to be followed with reason and discretion in the construction of the statute, although such construction seems contrary to the letter of the statute; and a thing which is within the letter of the statute is not within the statute, unless it be within the intention of the makers.

The precise meaning of the rule will be best understood by a more minute reference to the adjudged cases, where a construction has been put on laws in opposition to their plain and positive language; for it is perhaps more in this branch than any other that it may be said, that legal accuracy can not be obtained by any abstract rules, but only by impregnating, or, as it were, saturating, the mind with judicial decisions, and with that learning tempered by sagacity which so eminently distinguishes the English and American tribunals.

Again, it has been said, that the words of a statute are not to be construed so as to extend beyond the mischief contemplated by the act, where such construction would be injurious to third persons. So, where an English statute directed in regard to ecclesiastical leases, that all leases therein specified should be *utterly void and of none effect, to all intents, constructions, and purposes;* yet, upon the ground that the object of the statute was to prevent the impoverishing of the successor, it was held that a lease by a dean and chapter, though within the act, was good during the life of the dean.

So, where an English statute, 26 Geo. III., c. 60, sec. 17, declared that a bill or other instrument of sale of a vessel, which did not recite the certificate of registry, should be utterly null and void to all intents and purposes, it was held that where a bill of sale transferred

a ship by way of mortgage without reciting the certificate of registry, the instrument should be treated as void so far forth as it was meant to convey the property in the ship; but that the mortgagor might be sued upon his personal covenant in the instrument for the repayment of the money lent.

An English statute (2 Geo. III. c. 19, sec. 1, and 39 Geo. III. c. 34) enacts that no person shall, upon any pretense whatsoever, take, kill, *or have in his possession* any partridge, between the first day of February and the first day of September. The defendant had partridges in his possession several days after the first day of February; but the King's Bench refused to construe the statute according to its plain letter, because, as they said, it might lead to the absurd consequence, that a party who should on the last moment of the first of February kill a partridge, would be guilty of an offense by having the same partridge in his possession at the earliest moment of the second of February.

The statute, 46 Geo. III., sec. 4, enacts that every person who shall appraise any estate, real or personal, in expectation of any hire or reward, shall be deemed an appraiser within the act. In construing it, Lord Ellenborough admitted "that if those words are to be construed literally, the consequence will be that every person who in one single instance only, shall happen to make a valuation, must, without regard to circumstances, be subject to the appraiser's duty;" and on the ground of the inconvenience and hardships of such construction, held that it was to be *limited to the persons who pursued the calling or occupation of an appraiser.*

A Massachusetts statute declared all usurious mortgages *utterly void;* but the court held that this meant void only as against the mortgagor and those holding under him, and that an usurious mortgage could not be avoided by a mere stranger or trespasser.

So, in the same State, the statute of wills provided that *all persons* of full age and of sound mind might dispose of their real estate, as well by last will and testament in writing, as otherwise by any act executed in his or her lifetime. But this language was held not to include *married women*, on the ground that it was not the design of the legislature to alter the relation between husband and wife, or the legal effect of that relation.

So, where a statute gave triple damages against *any* person who should commit waste on land pending a suit for its recovery, the court held that the act did not apply to a party wholly ignorant that any suit was pending, saying, "We can hardly suppose the legislature intended to punish so severely a trespasser wholly ignorant of the pending of the suit. The statute is highly penal, and should there-

fore be *limited in its application to the object the legislature had in view.*"

In Vermont, where it was provided by one section of an act, that if an attorney should *knowingly* receive a greater sum for fees than provided for by law, he should pay a tenfold penalty, and the next section declared that if any officer or other person should receive any greater fees than provided for by law, he should pay a penalty—it was held that the word *knowingly* was to be construed as incorporated in the latter section; and in regard to another section of the same act it was said, "The necessity of the case *compels* us to *include* these additional words, at the expense of *forcing* the construction of the *words* of the act, in order to avoid so gross an absurdity as the literal interpretation would lead us into."

Again, in Smith on Statutes, chap. 12, which is all on penal statutes:

"So in New-York, a statute prohibited any sheriff or any deputy-sheriff, or any one for them, from purchasing any property at any execution sale, and declared all purchases so made void. In an action of ejection, certain premises had been sold by one deputy-sheriff, on an execution issued under a judgment owned by another deputy of of the same sheriff, and were bid off, as was alleged, by the deputy who owned the judgment. It was contended that, under the statute the purchase was void. It was conceded that, if the facts wee as alleged, the case came within the letter of the act; but it was held by the Supreme Court of New-York, that the statute should not apply, on the ground that the manifest object of the law was to prevent abuse, and to prohibit sheriffs and their deputies, in *their official capacity*, from being purchasers at their own sales, and thus being induced to act corruptly in relation to them, but that it could never have been intended to place those persons in a worse situation than others, as to the collections of their own demands. The words 'beyond seas,' in a State statute of limitations, incautiously borrowed from an English act, have been constructed by the Supreme Court of the United States to mean *out of the State.* So again in Maryland, an act authorizing attachments on judgments, to be laid in the hands of any 'person or persons whatever, corporate or sole,' has been held not to include *municipal* corporations, they being considered to be excepted on grounds of public policy and convenience, municipal corporations being parts of the State government exercising delegated political powers for public purposes. In the same State, the charter of a cemetery company provided that a certain number of acres of land should be forever appropriated and set apart as a cemetery, which, so long as used as such, should not be liable *to any tax or public imposition whatever.* Notwithstanding this general and

sweeping language, it has been held by the Court of Appeals that a paving-tax, for paving the street in front of the property in question, was not embraced in the exemption, on the ground that the intention of the legislature was to exempt the property from all taxes or charges imposed for the purpose of revenue, but not to relieve it from impositions inseparably incident to the location in regard to other property."

Again, chap. 18, speaking of penal statutes, "They are to receive a strict interpretation," etc.

"Penal statutes are to receive a strict interpretation. Under the denomination of penal statutes, within this rule are included, not merely such as inflict a penalty, or which *ex vi termini* work a forfeiture, but it extends to statutes which give a summary remedy, or those made in favor of corporations, or individuals, in derogation of common right, or those made in derogation of the common law, or in derogation of rights of property, or disability of persons, or that take away the estate of a citizen, or statutes which impose restriction upon trade or common occupations, or which levy an excise or tax on the citizen, or a statute introductive of a new principle of common law. The rule that penal statutes shall be construed strictly, is subject to some qualifications; they should not be construed against the manifest intention of the legislature, or so as to involve an absurdity.

"The general words of a penal statute must be restrained for the benefit of him against whom the penalty is inflicted. It is a maxim of the common law, that *receditur a placitis juris potius quam injuria et delicta maneant impunita;* but this applies only to positive maxims, *placita juris*, rather than *regulæ juris*. It is said, if the rule be one of the higher sort of maxims, that are *regulæ rationales*, and not *positivæ*, then the law will rather endure a partial offense to escape without punishment, than violate such a rule. Of this latter kind (*regulæ rationales*) is the rule that penal statutes shall not be taken by equity. Thus, a statute having enacted that those who were convicted of stealing 'horses,' should not have the benefit of clergy, was held not to extend to him that should steal but 'one horse,' and to remedy this defect a new act was passed to provide for such a case.

"By another restrictive rule of construing penal statutes, if general words follow an enumeration of particular cases, such general words are held to apply only to cases of the same kind as those which are expressly mentioned. Thus, where by a statute persons who should steal sheep, or any other cattle, were deprived of the benefit of clergy—the stealing of any cattle, whether considerable or not considerable, seems to be embraced in these general words, 'any oth-

er cattle,' yet they were looked upon as too loose to create a capital offense.

"We have already seen that the reason why penal statutes should not be extended by construction seems to be, that the law does not allow of constructive offenses or of arbitrary punishment: no man incurred a penalty unless the act which subjects him to it be both within the letter and spirit of the statute imposing the penalty.

"In the case of *The Enterprise*, 1 Paine's R. 32, it was said: 'That while penal statutes are to receive a strict construction, nothing more is meant than that they shall not, by what may be thought their spirit or equity, be extended to offenses other than those which are specially and clearly described and provided for. A court is not precluded from inquiring into the intention of the legislature. However clearly a law may be expressed, this must ever, more or less, be a matter of inquiry. A court is not, however, to arrive at this intention by mere conjecture, but is to collect it from the object which the legislature had in view, and the expressions used, which should be competent and proper to apprise the community at large of the rule which it is intended to prescribe for their government. For, although ignorance of the law be no excuse for its violation, yet, if this ignorance be the consequence of an ambiguous or obscure phraseology, some indulgence is due to it. It should be a principle of every criminal code, and certainly belongs to ours, that no person be judged guilty of an offense, unless it be created and promulgated in terms which leave no reasonable doubt of their meaning. If it be the duty of the jury to acquit, where such doubt exists concerning facts, it is equally incumbent on a judge not to apply the law to a case where he labors under the same uncertainty as to the meaning of the legislature. If this be involved in a considerable difficulty, from the use of language not perfectly intelligible, much circumspection becomes necessary, especially if the consequences are so penal as scarcely to admit of aggravation. When the sense of a penal statute is obvious, consequences are not to be disregarded; but if doubtful, they are to have their weight in interpretation. It will at once be concluded that no man should be stripped of a very valuable property—perhaps of his all—be disfranchised and consigned to public ignominy and reproach, unless it be very clear that such high penalties have been annexed by the law to the act which he has committed. If these principles be correct, a court has no option where considerable ambiguity arises in a penal statute, but is bound to decide in favor of the party accused. It is more consistent with the principles of liberty that a court should acquit where the legislature intended to punish, than that it should punish where it was intended to treat with impunity."

Now, the canons of our Church afford an illustration of both these kinds of interpretation, to wit, extended interpretation and restrictive interpretation, to which I wish to call the Court's attention just here.

The first statute passed on this subject was in the words of the commencement of the present canon. The second one provided that where a minister, through infirmity or from any other cause, did not perform his regular services, it should be lawful for the authorities of his church to prove that fact to the bishop; and upon that being done, they could then open the doors of their church to any other regularly ordained minister. There the canon stopped; but it has been amended and carried further by very late legislation; and upon that point Hoffman, at page 380 of his work, says what I shall now read: "Although the canon declares simply that the church-wardens shall, on proof of neglect and refusal, have power to open the doors of the church to any minister, yet no doubt there must be some formal act of the authority applied to, sanctioning the proceeding. The proof is to be not only of the inability, but of the refusal, and its reasonableness."

There was a case of extended interpretation—a case where new words are put into the canon. So that in one of these canons we have a restricted interpretation, and in the other an extended interpretation.

The result of all this is that, to make an act an offense, it must be both within the letter and the spirit of the statute imposing the penalty, or, as the language of the law elsewhere is, "within the words and the mischief." And so it being plain that to apply this canon literally would stultify the legislature, and make criminal what might be the dictate of Christian charity or duty, the inquiry must be for some "mischief" against which the canon was directed; and having found that, our next inquiry must be, whether the act complained of is within it?

This brings me to the third general head: What mischief was there, then, against which this canon was directed? The history and language of the canon must guide us in this inquiry. The original was passed in 1792, at a convention held in Trinity Church in this city. The record of that convention is to be found in Bishop White's collection of Church Journals, page 129. What was the then state of the Church? All told, 176 clergymen—19 in New-York, 9 in New-Jersey, 22 in Connecticut, 2 in Rhode Island, 14 in Pennsylvania, 3 in Delaware, 33 in Maryland, 59 in Virginia, 14 in South-Carolina. And the Revolution had weakened all. We all know the history of the Church in that regard. Naturally, having been of the Established Church in this country—or favored at least

by the establishment in England—our ministers did not so largely take part against the crown as did the ministers of some other denominations. When the Revolution closed, many churches were dismantled, and more were bereft of their officiating clergy; and in the year 1786, or '92, only 176 of the clergy were left, few and poor. Very few, and most of them very poor, this was the condition of clergy and parishes—needing nursing, prudence, and economy of resources. This poverty enhanced one danger to the clergy—lately having livings, but now dependent on voluntary contributions—that of rivalry. Worse than this for them—the law formerly having cared for them, wherever parishes were lawful—they were now at the mercy of their own people. Not only could these build new churches, or establish new congregations, but they could open their own churches to the clergy. And so dissensions might brew, and cause destruction to the clergy, to the parishes, to the Church. This was an evil—a mischief—and to be remedied only in one way. What was that way? Not by a canon passed against the parish; canonical law has no power over the parish. The law of the land had; but the law of the land favored the power of the parish, because it hurled the parson from his sovereignty, and placed the trustees of the church, whoever they might be, in his position. Before, he had had tithes in some of the States, and thus could live as ministers did in England; but that was now all gone, and he had to depend upon his people; and there was no way in which the mischief could be reached, except by a law which should act ecclesiastically, and upon the clergy of the Church generally. A new parish could not be formed, nor could services be held by a congregation, however rebellious, however indisposed to properly regard or revere their clergyman, without the aid of another clergyman. Hence, the law-makers come in and say, "We can not get at the parish, but we will get at the mischief; and we will do it by forbidding ministers to officiate unless by consent of the resident ministers, in any parish or parochial cure." And it was good law, for it reprehended conduct which was unchristian if not immoral, and which tended to cripple an already enfeebled Church. It provided that no clergyman should officiate by preaching or reading prayers within the parish or parochial cure of another without his permission, if present, or, if absent, that of the vestry or trustees of the congregation. The simple fact is, as I have endeavored to show, that this canon did what before the Revolution the law of the land did—made the parson master of his church. This was its intent. It was to defend him against his people, by prohibiting any brother clergyman from being so selfish as to seek his livelihood at the cost of an incumbent. That this was so, is plain from the canon passed at the next convention—three years after.

The first canon was passed, as I have said, in 1792, and it read as I have stated; but in three years afterward came an amendment in these words: "But if any minister of the Church shall, from inability or any other cause, neglect to perform the regular services to his congregation, and shall refuse his consent to any other minister of his Church to officiate within his cure, the church-wardens, vestrymen, or trustees of such congregation shall, on proof of such neglect and refusal, before the bishop of the diocese, so have power to open the doors of their church to any regular minister of the Protestant Episcopal Church."

Now, this is exactly as if these two conventions agreed, speaking one to the other as well as to the Church at large. The first convention says, "Here there is a great mischief"—and no doubt the matter came up upon the complaint of some one who had sustained injury in that way—the first convention says, "Here is a great mischief; the law of the land no longer protects our clergy. Here is Mr. So-and-so, whose church has been absolutely filled by his congregation against his will. He is rector, but he is at the same time deposed." And so they passed the first canon, saying in general terms that no minister shall officiate in any parish unless he have the consent of the incumbent.

The next convention has the matter brought before it, and it says, "Yes, but there are two sides to the question. Sometimes a minister will not do his duty, sometimes a man is so situated that he can not do his duty, and yet he may not be willing to let any body else do it for him;" and it seems to me that there is a good deal in that applicable to this case. Then the question came up, What is to be done? ought not the congregation to have an opportunity to put another man in his place, under such circumstances? Certainly, say the convention; and thus they pass this canon. The Court will observe this refers not to casual officiating, not to incidental preaching. "Regular services" are the words; and if the minister does not perform the regular services for his congregation, whether it be through his infirmity or his fault, the law of the Church goes with the law of the land, and says, This congregation shall have power to depose this useless or this wrong-headed brother; this congregation shall have power to substitute a live man for a dead man; and the Church shall go on, whether the car of its progress roll over the body of its useless members or not. That is the meaning of these two canons.

Now, apply the analogy of the canon to the case in hand. Here is another case where the resident clergy, not from infirmity, but from "inability, or any other cause," (I take the very words of the statute,) can not officiate in this particular spot. Can he? Can Dr.

Stubbs, can Dr. Boggs go to that Methodist Church and officiate? Can it be that the words of the canon are to make him an offender, when, if Dr. Stubbs were paralytic, so that he could neither officiate nor consent, Mr. Tyng might go and officiate in his very pulpit, and yet he be rector? Can that be so? I submit most sincerely that we see here in the origin of this legislation, that the mischief aimed at was rivalry—stealing away the hearts of a clergyman's own congregation—aiding malcontents to his injury, pecuniarily and otherwise. Whoever did that was an offender, rightly so considered; he was guilty, judged by the law of Christianity, of two things—selfish disregard of a brother's pecuniary interest, and of weakening the Church and its power of growth for his own selfish emolument. The statute aims to punish a criminal; and shall I be required to stand here and argue the question, whether, under the statute of the loved Protestant Episcopal Church of the United States of America, a man who is far from a criminal—ay, just as far in this respect as the Saviour who died for him—may go and preach the gospel of his Master without asking leave?

Now, this view of the object aimed at by the canon of 1792 is corroborated by the title of the new canon of 1795, "of the officiating of ministers in the churches, or within the parochial cures of other clergymen." In the statute itself it says, "No clergyman belonging to this Church shall officiate in the parish, *or* within the parochial cure of another clergyman." Now, these words, "parish" and "parochial cure," were not used to mean the same thing. Parochial cure is parochial *care;* we shall see that hereafter. The English is substituted for the Latin in one of the references that I shall give; and when it says in the canon, "parish or parochial cure," it is not tautology. Parochial cure is a more comprehensive term than parish. It covers people, but it covers also territory. What, then, is the meaning of the word "parish"? Why, the title of this canon shows you—"*churches*, or parochial cures;" "parish, or parochial cure." Are not "church" and "parish" here synonymous? Now, it is observable that this second canon came from Virginia. That appears in Bishop White's book, (p. 138,) where the Court will see that it was offered by a Mr. Andrews, who, as may be seen by looking at the list of delegates, was a layman from Virginia. There was a Dr. Andrews there from Pennsylvania, but this canon was offered by the layman, Mr. Andrews. Coming, then, from Virginia, where there were parishes, there was a greater force in the title now prefixed—by which, instead of "parish or parochial cure," it is called "*church* or parochial cure." What difference is there between "parish" and "parochial cure"? How far does one extend beyond the other? Why these words? We must give them separate forces,

if we can. I answer, with the distinguished clergyman who gave evidence upon the stand here, whom for his learning and ability all men know and revere—I answer with him that parish signifies church simply; parochial cure is a term used to protect clergy against interference with them in such places, or with such people as are under their care—their congregations namely. So that a man could not say, "I did not preach in your church," if he did try to establish himself with another's congregation, though outside the Church.

The same similarity of meaning between "parish" and "church" is found elsewhere. I refer to Bishop White's Church Journal, (p. 236,) "In cases of controversy between ministers, who now or may hereafter hold the rectorship of *churches or parishes*, in the vestry or congregation of such *churches or parishes*;" and again, at p. 235, "No minister who may be hereafter elected into any *parish or church*;" and again, at p. 234, "Concerning the election and induction of ministers into *parishes or churches*, the vestry shall," etc. In all these cases the words "parish" and "church" seem to have the same signification. "Parish," in Virginia, might probably have a larger designation; but even there, as I have shown you, the words "parish" and "church" were regarded as identical.

Now, we will see what "parochial cure" is. On page 314 of this same book, in a report, this language is used: "The bishops are of opinion that any person duly baptized in any religious society, extraneous to this communion, joining himself to any congregation of this communion, and possessing an interest in its concerns, in consequence of express or implied permission, may be properly entered by the minister on the list of the names of persons under his parochial care." "Persons under his parochial care," is evidently, therefore, the definition, enlarged, of "parochial cure," as used in these other statutes.

Another canon was passed in 1795, which shows that rivalry and injury thus, to brother clergymen, was the mischief aimed at. That canon is entitled a canon for the better accomplishment of the purpose of the 6th canon of 1792, and it says:

"Whereas, there is no provision made in the '6th canon of 1792' for the case of such a vicinity of two or more churches as that there can be no local boundaries drawn between their respective cures, it is hereby ordained that in every such case no minister of the Church other than the parochial clergy shall preach within the common limits of the same in any other place than in one of the churches thereof, without the consent of the major number of the parochial clergy of the said churches."

The idea is still rivalry. Between two resident ministers there could be presumed no improper rivalry; the parish was theirs, and they could preach anywhere; but no stranger could come there and

preach and say, "I do not break the canon, because neither of you has local boundaries." It was their protection—intended to protect them from rivalry. I tell you, my learned auditory—learned in the law of the Church and in the law of God, you living in this day have no conception of the state of mind and the state of feeling of those who, when the storm of the Revolution had spent itself, found themselves charged with the care and nurture of this weak and infant Church. They were men struggling for life, amidst an unpopularity for which they were not responsible, but which they could in no wise control; and these canons were passed, not for the purpose of favoring their ideas of professional dignity or professional etiquette, but for the protection of the Church and its ministers in the struggle for life in which both were engaged; and particularly, as I have already said, these canons were passed to prevent rivalry between the clergy of the Church, so that in this large and thinly settled field all might have an equal chance.

But not only is there by these canons a mischief admitted to exist, but I submit to the Court that the state of the Church and the opinions of its councils at that time, tend to show that conduct such as you are now trying the respondent for was not intended to be forbidden. A feeble Church, surrounded by stronger bodies, oppressed and borne down by unpopularity—why not encourage proselytism, encourage the dissemination of its doctrines, encourage the repetition of its liturgy? What harm to clergy or church could it do? What moral guilt or want of Christian obligation could possibly arise from it? Can a rational mind believe that the Church intended to make a minister's exercise of his privilege and his duty dependent upon somebody else's idea of courtesy—a matter about which there is more difference of opinion than almost any thing else, and to which is most applicable the old maxim, "*De gustibus nil disputandum*"?

Again, at this time, when one party in the Church is inclined to eschew all other denominations as schismatics, and when the opinions of some of the clergy are offended by any acts which may even be tortured into an admission of the parity of other religious denominations, it is well to remember that, at that time, (it is a historical fact,) this parity was actually acknowledged. There is no question whatever that opinion on this subject has undergone a change since then, and that there are many more now who hold against the idea of acknowledging the parity of other churches; but at the same time there can be no question about the fact that, in the old times, the prevailing opinion in the Episcopal Church was directly the reverse; and in this connection, I call attention to a paper which I find in this same book of Bishop White's, at page 100, which goes very strongly to prove what I have said. The paper is dated In Convention, Au-

gust 7th, 1789, and addressed to Washington. It has the signatures of William White, Bishop; Samuel Provost, Bishop; Benjamin Moore, assistant minister at Trinity Church; Abraham Beach, another assistant minister; William Fraser; —— Ogden, and a list of others. After speaking in a complimentary way of his character, energy, etc., they say to Washington: "To these considerations inspiring us with the most pleasing expectations, as private citizens, permit us to add that, as the representatives of a numerous and extended church, we most thankfully rejoice in the election of a civil ruler deservedly beloved, and eminently distinguished among the friends of genuine religion, who has happily united *a tender regard for other churches* with an inviolable attachment to his own." (Applause.)

It is of course unnecessary for me to call attention to the language of the preface to the Book of Common Prayer with which we are all familiar, and which does much to relieve the Church from the odium which naturally attaches to it from the opinions and expressions of some of those who, in my judgment, have not adopted the proper exposition of either the spirit or the doctrine of this Church, or of the Church of England, in that regard; nor am I called on to corroborate the distinct admission made in that preface, that the "different denominations of Christians in these States," were regarded as "churches," respectively, with the beautiful language of the prayer appointed in the daily service, that "all who profess and call themselves Christians may be led into the way of truth, and hold the faith in unity of spirit, in the bond of peace, and in righteousness of life."

Pursuing my argument, I call attention to the fact that, whatever was the offense described, the offense created by the canon has existed without alteration or extension, from the beginning, except as to the words "or otherwise." The first canon reads, "shall officiate by preaching or reading prayers;" and in 1832, the words, "or otherwise," were added. These words enlarged the number of the acts which might be reprehensible, but did not alter the *complexion* of the acts forbidden. It was still rivalry, something which might hurt the resident clergyman, because evidently he might either be ruined by the inauguration of regular opposition services, or he might have his influence over his people swept away by repeated minor attacks or invasions—by another minister visiting his people and gaining their affections, by performing for them the offices of the Church, visiting their sick-chambers, burying their dead, baptizing their children, marrying their children—by these means the influence of the resident minister might be destroyed and swept away, perhaps, even more thoroughly than by regular preaching or officiating in public.

Later acts simply extend or define the limits of parishes locally. They do nothing to indicate that acts of a class once allowable, are

no longer so; and penal statutes are not to be extended by implication or by careless language. And now let me formally submit another suggestion, already glanced at, to the common sense of this Court. When the canon speaks of "parishes" and "parochial cures," and establishes limits, they must impliedly be restrained to such part of their limits (I have used the idea incidentally before) as could by possibility belong to them; and whenever the fact is that a certain portion of territory is withdrawn from the parochial cure, (especially if actually and confessedly hostile to it,) the canon which was passed to protect clergymen within their own cures has clearly no application.

Some illustrations of this have already been given. Take again and consider that one of West-Point. There is a little church in the township where that school of splendid soldiers is located. Now, will it be alleged that, before a stranger can officiate at West-Point, he must have the express permission of the minister of that church? Must the chaplain of a marching regiment halting there, get such permission before he can properly do his duty as chaplain?

Take another illustration—a ship of war which enters this or any other port. Must a minister who goes aboard to officiate, to read prayers for the officers and men of that ship, get the express permission of the resident clergy of the town; and if he does not, will he violate the canon?

Or take, as another illustration of which I have already spoken, a jail. Does the canon apply in such a case? The letter of it does; but no one will contend that it does really apply, for its inmates can not make up another congregation. The fact is, that the canon assumes no jurisdiction in such cases. It does not follow the clergy to these excepted spots; nor are their acts there within the mischief sought to be remedied. Those acts do no wrong to any man, and they are out of the limits. No convention can be understood to make such a territory part of what it describes.

Now, we have an analogy here to which we can effectually resort for interpretation. States cede to the United States portions of their territory for public purposes. The State of New-Jersey has ceded to the United States, for certain purposes, jurisdiction over the neck of land generally called Sandy Hook. The State of New-York has ceded for other purposes, and given the United States jurisdiction over, the ground where West-Point is, and where Fort Hamilton is; and so with the other States. The States, each, pass general laws which are on their face applicable to every township in the State. The language of those laws is general. It is, "No man in any county in this State shall do so and so"—nothing being said about excepting certain places which have been ceded to the United

States, but the laws being written just as if there had never been any such cession. Yet how is such a law read? Why, it is read exactly as if these ceded portions of State territory were expressly excepted from its operation. Nay, sometimes, acts are passed merely defining the boundaries of townships or counties, which include those ceded portions of territory, but they never expressly except them. It is taken for granted that they are excepted.

I submit that here is an analogy quite in point, and I am a little anxious to see what answer will or can be made to it.

Laws are necessarily somewhat general in their language; and although these State laws by their strict language imply a jurisdiction over these previously ceded localities, yet no one for one moment contends that it is the intention of the State thereby to renew her jurisdiction over them. Nay, more, when the canon of the Church says that the local boundaries of parishes shall be those of cities, etc., does it mean that those parts of the territory within those boundaries which the Church can not control—which are in fact beyond its jurisdiction—are to be regarded as included within its intentions? Now, then, what difference is there between these pieces of ground, these ceded territories, and the territory of the Methodist Episcopal congregation over which their jurisdiction is established by actual occupation with bricks and mortar, of so many feet of ground? It is not a superior power, nor in this matter of the cession of territory, is the United States regarded as a superior power; but when the arrangement was made, it was made between equals, and it was a valid arrangement; and so in regard to the occupation of this little territory by this congregation. Is not the ground occupied by a Presbyterian church as much out of the power and reach of any Episcopal convention as West-Point, or Fort Hamilton, or the camp of a regiment on its march, or a tarrying or stationary ship of war, or a foreign vessel?

Nay, properly considered is it not more?—for all these may be in harmony with the Church, while the Methodist church at New-Brunswick is really an adverse jurisdiction, professedly and positively so asserted.

Now, I may be asked whether, if a clergyman of a church *regularly* officiates in a Presbyterian church, he may not break the canon? My answer to that is ready: If the congregation adopt him as their regular minister and open the doors of their church regularly for his officiating, it may be contended, on the one side, that they have quitted their adverse attitude and have brought themselves, by that act, directly within the bounds of the Episcopal parish; or it may be contended, (and it seems to me with great force,) that, even if they did that, it would still be questionable whether, under the policy of the Church

and the probable intention of the framers of the canon, such an act, which has in it no rivalry, which does no harm to another, which in no wise restricts the influence or the income of the resident clergy, but which, as by a miraculous conversion, brings at once into the pale of the Church a whole congregation of men who otherwise would have been out of it; I say, it might still be questionable whether the Church, following out its policy, would not regard such an act rather as one to be encouraged and applauded, than as one to be restricted or forbidden. Perhaps, however, such a matter would be more properly governed by other canons than the one now under consideration, namely, those canons which relate to the organization of new parishes.

This view, that the intent of the canon is to prevent rivalry—regular opposition, the disturbance of pastoral relations, or the division and alienation of their people, and especially to prevent efforts to get up new organizations or parishes within the cures of resident clergymen, is confirmed by observing that, in the last paragraph of the present canon, there is a reference to the formation of new parishes. "When, under diocesan authority, a new parish," etc., "is framed, it shall be subject to this canon."

Then it is further confirmed by noticing that, in the canon of 1853, (which is found on page 66 of the canons of 1853,) the two subjects are included in the same canon—"IX. Of the officiating of ministers of this Church, and of the formation of parishes within the parochial cures of other clergymen"—as if the whole subject were in *pari materia*—the officiating would seem to be regarded as something tending to the organization of parishes, the law being able to act only on the clergyman prohibitively. This conduct is by the canon prevented, and then rules are given within which he may officiate. And it may well be doubted whether any "officiating" is intended to be restricted, except that which is regular and having the prohibited and mischievous intention; for the word "officiating" is frequently used in the sense of permanent service.

Take canon 8, title 1, (page 23 canons of 1859,) "Of ministers *officiating* in a foreign language."

"When a clergyman, coming from a foreign country, shall be called to a church of this communion in which divine service is celebrated in a foreign language, he may, with the approbation of the bishop of the diocese, ... *settle* in the said church as the minister thereof, without having resided one year in the United States."

The Court will observe that, though the title of the canon contains the word "officiate," that word is not once used in the body of the canon; but when the act which is spoken of in the title as "offi-

ciating" comes to be mentioned in the canon itself, it is defined by the phrase, "Settle in the said church."

Again: Title I., canon 12, (page 28, Canons of 1859.) "No minister, removing from one diocese or missionary district to another, shall officiate as the rector, stated minister, or assistant minister of any parish or congregation of the diocese or district to which he removes until he shall have obtained a certificate," etc. Again, canon 11 (page 27) speaks of a minister not being permitted to officiate in any congregation of this Church without first producing evidence of his being a minister thereof.

If I remember right, it is to this canon that Bishop McIlvaine has alluded in a late publication, where he relates, from the mouth of Bishop White, the origin of the canon, which it seems was passed by reason of a singular case that happened in the early history of the Church in this country. A clergyman of the Church of England, coming across the water, fell sick and died. There was in the same ship a man who had escaped from England under a charge of crime He had made the acquaintance of this clergyman, had nursed him in his sickness, and was regarded generally by the passengers and the officers of the vessel as being in some way connected with him—sufficiently so to be permitted to take charge of his affairs after his death. Among the papers of the clergyman was one which entitled him to be received as a minister of this Church; and this man assumed the dead minister's name, produced his papers as belonging to himself, went to a distant part of the country, was actually received as a clergyman, made the minister of a charge, and officiated there (I think, the story runs) until his death. The discovery being then made who he was and how the Church had been imposed upon, this canon was passed, according to Bishop White, to guard against the repetition of the imposture. The Court will see that, even in that canon, there is a contrast made between the word "officiating," used by itself, and the words "officiating transiently;" so that the framers of the canon would seem to have meant, when they used the word "officiate," or "officiating," some regular action, some action with the intent of persistent repetition; and when they speak of mere occasional or accidental officiation, they speak of it as "officiating transiently."

A proper attention to canon 9 of 1853, to which I have already referred, leads the mind to this idea, How could the law-makers have endeavored, as they did, to regulate the formation of parishes, and for that purpose have prohibited (it was the only way they could reach the case) the officiating of clergymen, by the very language that is used in this canon in question, except when residents ne-

glected to perform *regular* services, and have intended any *occasional* officiating?

Again, the passage of the canon in question cotemporaneously with the resuscitation of the Church here, the rights of whose clergy had previously been protected by legal enactment, and the admitted necessity of such protection, leads to the conviction that this legislation had the same object, and was intended to attain the same result with these legal enactments.

I have studied as thoroughly as I could the law of England bearing upon the subject, and I find:

First. That the canon and ecclesiastical law of England made the consent of the incumbent necessary to the establishment of a new parish or charge.

Second. I do not find any enactment prohibiting the clergy from the mere act of officiating within the cure of other clergymen. So far as I have been able to see, there is nothing of the kind on the English statute-books; and I observe again, and

Third. That the only way in which a Church not established can protect the income of the clergy is by enactments like this, bearing upon the clergyman and restricting his power of officiating. Hence, I conclude,

Fourth. That this, like all I have said, leads to the conviction that the legislature of the Church aimed at the invasion of parishes, not at occasional acts, not at any extra-parochial officiating.

I will make a few observations upon these points.

Parishes were not the result of enactments, but of *custom*—the origin of the unwritten law of England. Great care was taken to keep up their boundaries; and to that end a yearly perambulation was had, and it became at last the occasion of so much disorder that it was by law restricted. On a certain day in the year, the parson and his parishioners in each parish used to go their rounds; and as time passed on, this custom was accompanied by various forms of boisterous merriment. By this perambulation of their boundaries, the limits of the parishes were fixed, within which boundaries the tithes of each parish were collectable. The Court will find something about this in *Hoffman*, pp. 26–228.

But chapels were erected in these parishes called "chapels of ease," meaning that they were placed there for the ease of parishioners, who, but for them, would have a long journey to travel to their parish churches. The law of England made it a duty, failure in which was punishable by fine and imprisonment, for every man, whatever his belief, to go so often each year to the parish church, as well as to give tithes to the parish minister: but these chapels abstracted, or might abstract, from the general funds of the parish;

and to authorize their erection in any parish, the joint consent of diocesan, patron, and incumbent was necessary. (1 Burn's Ecclesiastical Law, 301. Title, CHAPEL.)

But all this while there was another kind of chapel that was perfectly lawful, and could be established without the consent of any body but the bishop. These were called private chapels, and sometimes oratories. They were for the benefit of great folks. Noblemen and persons of account were allowed to have their private chapels, in which their chaplains were allowed to officiate, and to officiate regularly, and they were even allowed in the early statutes to administer the sacraments there in private; but a law was passed to prevent that to a certain extent, by providing that the heads of families who had these private chapels should come to the parish church so many times a year for mass. Observe here that the policy of the law of England is supposed to have shaped the policy of ours, and then observe that this idea of rivalry was perpetually governing the subject. "You shall not (said the law) have a chapel of ease without the incumbent's assent; but, at the same time, when you do not rival him, when you are paid by a nobleman, when the expenses of your officiating, whatever they may be, are borne by somebody else, and do not abstract from the tithes of the incumbent of the parish, you may officiate, *regularly* officiate." And as for occasional preaching and officiating, that, so far as I have been able to see, was nowhere prohibited in the law of England. Here I call attention to a fact that is within the knowledge of almost every one. We know that the city of London, like every other part of Great Britain, is divided into parishes having local bounds; and we all know that within a few years past occasional preaching has been instituted in the city of London by ministers of the Established Church; out-door meetings have been held, and one series of services was held in Exeter Hall, under the charge of ministers of the Established Church, and they were carried on there regularly. I am sorry to say that my notice of this point was so late that I have not been able to make proper search, so as to bring the exact facts before the Court; but I understand that an attempt was made, some time ago, in the ecclesiastical courts of Great Britain to interfere with the establishment of these regular services there—an act much more nearly within the spirit of the law than this, much more nearly a part of the "mischief" which this legislation was intended to defeat. I understand, I say, that an effort was made to stop those regular services; but the Court said, "No; there is no law against that. The only laws that exist on the subject are laws which were passed with the intent of preventing rivalry among clergymen, and injury to their interests, pecuniary or influential — injury to their permanent usefulness.

That was the design of the law." Now, the fact is, that all this law in England had a very early origin. In Hoffman's *Law of the Church*, page 227, the Court will find an old Latin letter, ascribed to Pope Dionysius, in the year 269, which I have translated thus:

"But we have given the churches each to separate presbyters, and have set off the parishes and cemeteries to them, that each might have his own, so, in truth, that none should *invade* the lands, bounds, and rights of the parish of another; but that every one should be content with his own limits, and in such a manner keep the *church and people committed to his trust*, that, before the tribunal of the Eternal Judge, he should give an account of *all committed to him*, and receive, not condemnation, but glory for his deeds."

Here we see the same object, to wit, to prevent that sort of conduct among the ministers of the Church, which tends to injure the permanent standing, influence, usefulness, or income of a particular clergyman by another's coming among the souls *committed to him*, and striving to get control of them.

Look at one more consequence of construing the canon in a way to cover cases beyond or without the intent of invasion. The canon anticipates the establishment of small local divisions for parishes by saying that a section of a town may be made a parish. The law of England compels residents in her parishes to support her parish churches. We never can do that here. There is no minister here but has parishioners who live beyond the limits, beyond the local boundaries of his parish. Can he not go to the houses of his own parishioners and officiate? I know the Rev. Dr. Stubbs has parishioners who live across the river from New-Brunswick. And although they may be at present under his parochial charge, (for I believe he has officiated for a while at a little village called Piscataway,) yet it might have been that that was no part of his charge, and it would cease to be so as soon as another clergyman took possession there. But can he not go over to the houses of his parishioners and officiate? If sickness require it, if a child of the family or if the master of the house be sick and about to die, can not Dr. Stubbs administer the sacraments of Baptism or of the Holy Communion? Certainly he can. But the letter of this canon forbids; why then can he do it? He can do it because, thereby, he invades no right, because the party to whom he ministers belongs to no other clergyman, because he is one of those "*committed to his trust.*"

Now, it is exactly the same in this case. Laying aside the fact that Mr. Tyng preached in New-Brunswick to some of his own parishioners, temporarily resident there, it is to be remembered that he preached there to a number of people who were not and could not

be any part of Dr. Stubbs's cure, and therefore, he did not interfere with Dr. Stubbs's rights, and he is not guilty of invasion.

I understand the learned author of the treatise on the Law of the Church, Judge Hoffman, as agreeing with the views I present. At page 365, he quotes the canons as they stood when he wrote, and treats the matter entirely as relating to *invasion*. There is not a word in all Judge Hoffman's book which indicates that it ever occurred to his mind that an occasional officiating like this, the going and preaching to a people out of the Church, and beyond her actual jurisdiction, was an invasion of the right of another clergyman. I understand him to hold, not only that this canon does not prohibit what is not an invasion, but that a new parish may be organized, and that its *invitation* will authorize officiating. He cites Bishop Henry U. Onderdonk for the last idea, while the doubt is mainly about that, Wisconsin authorities holding that the canon interdicts it.

The Commentaries of Dr. Hawks are not really discordant. At page 288 he first quotes this canon, and says: "This canon, there can be no doubt, was made from an experimental knowledge that it was necessary. In the infancy of our Church, when parishes were not very numerous, and their boundaries not very well defined; and when, beside, livings were, for the most part, very small, clergymen sometimes intruded into the cures of their brethren; and the early history of more than one of our dioceses shows that the irregularity was a fruitful cause of dissension. The evil was one which could be thoroughly corrected only by the legislation of the whole Church, and hence the canon before us. It was perceived (perhaps experience had made it plain) that, as the canon stood, a great abuse might creep in. A worthless minister might refuse to do duty himself, and might also prevent another from performing it within his cure. This occasioned the fifth canon of 1795."

This shows that the origin of the canon which I have endeavored to expound, was what I have said. There is not a word in his commentary which goes to show that he ever had the idea that either of these canons contemplated making such an act as that of Mr. Tyng's penal, unless you will attribute that idea to his commentary on the law of 1829. He says there, that, in a city containing one Episcopal church only, and several Congregational meeting-houses, the Episcopal clergyman was informed by one of his brethren, connected with the American Sunday-School Union, of his intention to address the Sunday-schools of other denominations belonging to the Union, and that he would, at the same time and place, address those of the Episcopal Church. The resident minister wished the address to his school in the Episcopal Church, where the others might also come, and forbade any other address. But the other insisted on his right

to address Presbyterians or Congregationalists, and that they could not be claimed as within the cure of his resident brother. Hence, says Dr. Hawks, the canon of 1829, being that which first enacted that the city or village limits should be the bounds of the parish.

This is what Dr. Hawks says: but I respectfully submit that he is mistaken, and that at any rate, what he says is not to control the construction of the canon. He gives no authority for this being the reason; and a statute can not be expounded by reference to such a fact as that, any more than by asking the legislators what they meant, and getting their oral declaration on the subject.

Again, the statute itself does not reach the case; as is well remarked by Hoffman, page 367, where, referring to the same thing, he says, "It may perhaps be questioned whether such an address to persons of other denominations, or scholars, is even now within the canon." Judge Hoffman is a most excellent and wary writer. In composing his book he has been careful to pronounce no opinion of his own; but he occasionally indicates that opinion by just such language as this; and though he says, "it may perhaps be questioned," his evident meaning is, that he does not regard that canon as at all prohibiting such a thing. How does it touch the matter of making a religious address, whether it be on Sunday in a church and with the Prayer-Book, or on a week-day without the church and without the Prayer-Book, to a Presbyterian, a Methodist, or any other congregation, who, so far as their general tenets are concerned, may be perhaps not improperly spoken of as hostile to ourselves?

To repeat and sum up: Construe this canon as its words import and these consequences follow: It enacts the greatest absurdities, restricting the liberty of preaching so much and so ridiculously, that scarce any man can, in fact, preach lawfully elsewhere than in his own pulpit, nor there unless a majority of ministers settled in the city agree to his call. It introduces a regulation impossible in this country, and forbids the clergy ministering to their own congregations outside of local limits. It additionally stultifies the legislation of the Church by imputing to it the intent to extend the jurisdiction of the clergy to persons who are confessedly hostile and over places in sole control of hostile persons—and where adverse doctrines are taught.

It further stultifies the legislation of the Church by imputing to it the intent to require a frequently impossible consent, or else to punish as an offense an endeavor to carry her tenets to those who will not acknowledge her rule. It further stultifies the legislation of the Church by imputing to it the desire to punish as an offense an act without possible criminality, or want of regard for fraternal or Christian obligation, and without conceivable injury to the person

whose express permission is to be obtained. Construe this canon so, and you make that wrong which, in the beginning, must have been hailed as a privilege, and to do which, in her early struggles, the Church must have wished for all her clergy the opportunity.

Construe this canon so, and you make wrong that which a large portion of the bishops, priests, and deacons of the Church have for seventy-five years regarded as right, and done gladly as a duty. Construe this canon so, and you make the Church, without an object, enable one man to prevent another from preaching the everlasting Gospel, though he do it with her blessed formularies in his hand, though with the Gospel he advocate her, though from his lips alone would that congregation receive it, though his only intent was to win souls to Christ, and the only result was to bring them to the Church of the man who stood in the way. With all this true, yet you will impute to the Church the wish to allow that man's whim, or worse, to close the mouth of a sworn champion of the cross. (Applause.)

May it please this reverend Court, I can not apologize for the length or earnestness of my remarks upon this subject, for its importance left me no alternative. You can not overestimate the importance of what you do. I feel that I know whereof I speak. I am an Episcopalian—deeply, thoroughly, yes, to my inmost soul, penetrated with a sense of the value of the Church, and filled with enthusiastic affection for her doctrines and her liturgy. It is the Church of my fathers for generations gone; it is the Church of my own choice and connection; none shall or can excel me in desire for her peace and prosperity And that peace and prosperity can only be attained by following her own long established policy. That policy has always been guided by one maxim—in all essentials, rigid conformity; in non-essentials, liberty. Men will be men. Let them differ where their difference is not on vital questions. But when doctrines are vital, all must believe as the creeds and the articles require. In this principle of action has been, thus far, her strength. She has always had parties within her fold. How can it be otherwise till the Great Shepherd returns to feed and guard the sheep for which he died? And sad will be the day when one of these parties forcibly carries out its peculiar tenets, and through such a trial as this obtains a triumph over the other! God only knows to what results such a triumph may eventually lead. My convictions are strong that the construction of this canon for which I have argued is correct, and notwithstanding all that may betoken a different result, I can not but hope that the reverend Court before me, on thorough consideration, will pronounce its decision that this is one of the cases wherein liberty exists for men to differ, so they all work for th[illegible] great result; and will say to this respon-

dent that he is not guilty of infringing the law of that Church for which his father and he have lived and labored, and for whose prosperity, whatever the issue, he still means to live, to work, and, if need be, to die. (Applause.)

At the conclusion of Mr. Parker's argument the Chairman announced that, owing to some members of the Court having to return to their parishes for the services of Sunday, further proceedings in the case would have to be postponed till some other day; and, after consultation with the counsels on both sides, the Court adjourned till Tuesday, February 25th.

ARGUMENT OF HONORABLE WILLIAM FULLERTON.

May it please the Court: The presentation of the respondent's case to this Court by my learned associate has been so full, complete, and exhaustive of its merits that there seems little, if any thing, left for me to do.

The importance of the question involved, to my client and to the Protestant Episcopal Church, of which he is a minister, is my apology for what I propose to add to what has already been so well submitted. Without proposing to discuss in detail the topics already considered, I ask the attention of the Court to some general considerations which naturally grow out of this case and challenge attention.

Before entering upon this discussion, permit me to state plainly, and I trust without offense, just what this case is. In *form* it is a presentment of Rev. Stephen H. Tyng, Jr., for exercising the functions of his sacred office as a minister of the Gospel in another parish or cure without the express permission of the resident ministers.

If this were all that there was of it, it would be comparatively a matter of very small importance, and would lose much of that interest which it has excited. But it is something more than this. It is a controversy between the two great parties in the Protestant Episcopal Church, which have set their faces and are travelling in opposite directions. They entertain different ideas of duty, and frequently find themselves in conflict in practising them. The one desires and seeks affectionate intercommunion with all other evangelical Protestant bodies, believing them to be but parts of the one church. They regard the exclusive attitude which the Protestant Episcopal Church has attempted to hold, an injury to the cause of religion, and contrary to the spirit of the Bible. They recognize the validity of the ministry of other evangelical denominations, and desire to unite with them in the good work of saving men.

The other is exclusive in its character and practices. It arrogates to itself the only true faith. Its tendencies are (I speak my own convictions and the convictions of a large body in the Church) to subvert the Protestant character of the Episcopal Church. It favors a priesthood rather than a ministry; bondage rather than liberty; and substitutes forms and ceremonies for a spiritual religion.

It is the latter party which seeks, by this prosecution, to obtain an advantage over its rivals, by stifling all sympathy, and preventing all coöperation with other Christian bodies. And this is to be accomplished by a forced, unnatural, and impracticable interpretation of one of the canons of the Church, so as to prohibit that freedom of thought and action which my client and those who sympathize with him in his religious views, deem necessary to a faithful ministry and a conscientious discharge of the most solemn obligations which man can possibly assume. No poor words of mine can measure the importance of this case.

The names of these parties are familiar to every ear. I mention their existence not to give offense, but the better to understand what we are about, and the consequences which may flow from the result of this trial. I should be false to my own convictions of duty, did I not thus call attention to the acknowledged existence and attitude of the High and Low Church parties, and warn all connected with this trial against a hasty or a partisan judgment.

This distinction, in which this controversy had its origin, which has imparted to it all its significance and importance, and which is most deeply to be affected by its results, has been uppermost in the mind of every person connected with this controversy, from its commencement to the present moment, and must have been also in the mind of the Bishop when he selected this Court to pass upon this charge. Your own convictions on this subject are doubtless fixed, and they are known to the world, because they have never been concealed. I freely acknowledge your right to entertain them. I impugn no man's motives, nor do I question the sincerity of any man's convictions. But when men are selected as judges to pass upon a charge against my client, which involves in all their length and breadth the questions which divide our Church, and in regard to which all its members have formed opinions, it is my right, yea, it is my duty, which no considerations of delicacy will permit me to omit, to speak plainly, though respectfully, and point out a danger which may exist, lest a preconceived and adverse opinion may obscure the path of duty, and the triumph of a party be regarded as more desirable than the prosperity and unity of the Church. (Applause.)

We have been frequently told by the other side, and I have no doubt it will be again repeated, that this trial is simply to determine

whether a minister of the Church is to obey its canons. This is a shallow view of the subject. The real question is, whether one party in the Church shall legislate for the other in respect to the subjects of vital difference between them, and in that way force upon their consciences an unrighteous restraint, and stay their steps in the path in which, in their view, lies their duty to God and man. It involves liberty of speech, freedom of conscience. Yea, it involves just what has brought martyrs to the stake, and kindled the fires of revolution.

If the view which Mr. Tyng took of this canon, and which in his judgment justified the act complained of, was something novel, or confined to himself, I should not indulge in these strong terms. But it is not. The same construction is claimed for it by a large and influential part of the clergy of our Church, and they have acted upon it, no man objecting, for nearly half a century. Proof of this has been given here in your presence, by the patriarchs of the Church; men who are an honor to any church or any nation; men whose usefulness no one will deny, whose sincerity no one will dare to call in question. If the younger Tyng has violated the canon, so has the elder; so have Doctors Newton, Dyer, Canfield, Smith, and Muhlenberg. The attempt to silence the respondent is an attempt to silence all these, and a host of others. Yes, lips which have proclaimed the glad tidings of the Gospel in all places and to all men, for more years than some of you have lived, are sought to be silenced by an unnatural interpretation of a canon; an interpretation which could not, if adopted, be carried out in your daily practices.

It was a sad day for the Protestant Episcopal Church, and for the cause of religion generally, when this prosecution was commenced. Because, result as it may, either in an acquittal or conviction, it places it in an undesirable position before the world, and brings it into disrepute. When I speak of the Christian Church, I do not confine myself to those who worship according to Episcopal forms, but I refer to the great body of Evangelical Christian believers who profess the Protestant faith, whatever may be their particular forms of worship. I draw no distinctions. I do not denominate one *the* Church, and all others *religious societies.* Such distinctions are uncharitable and unchristian, and in time will fade out in the light of more liberal opinions.

As to the Methodist Church, (called by Dr. Stubbs in his letter of complaint, the Methodist *Society,*) and which by force of circumstances has a part in this controversy, it certainly occupies an eminent and honorable position in the Christian world. Blind must that man be, who does not see that its labors have been blessed, and bigoted must he be who does not recognize in it an efficient co-laborer in the great work of evangelizing the world. In this country it may

be justly called the pioneer of the Christian faith. In the great west of our own country, its ministers are found in the foremost ranks of those who are erecting altars for the worship of God: and the apostolic succession comes a long way behind, treading in the path already beaten down and made plain for them. It speaks for itself. On the day when Dr. Stubbs wrote that letter, there were more communicants of the Methodist Church in the little State of New-Jersey alone, than there were communicants of the Protestant Episcopal Church in the whole United States. If there is any doubt in regard to the accuracy of this startling statement, you have but to consult the last census, and it will be found strictly true. Again, during the past year this Church celebrated its centenary, and a request went forth from its central board that, on that day, there might be a special contribution among all the brotherhood, for forwarding the building of new churches, and promoting the spread of the Gospel, and this was to be brought on that day as an offering to be laid on the altar of their gratitude. This contribution amounted to the stupendous sum of $8,500,000. You may call it a Society, if you choose, but you will not dwarf its dimensions, belittle its importance, or cripple its energies. The spirit of John Wesley still lives and animates it. Thousands will continue to flock to its standard, confess its faith, preach its doctrines; and it will survive all the taunts and sneers of its enemies. It needs no vindication or eulogy from me.

The ministers of that Church are not

> "The things that mount the rostrum with a skip,
> And then skip down again, pronounce a text,
> Cry, Hem! and, reading what they never wrote,
> Just fifteen minutes, bundle up their work,
> And with a well-bred whisper close the scene."

The late Bishop Chase, whose name is revered by all men, was accustomed to relate that, when he was acting as a missionary on the frontiers, he heard from the Indians what they regarded as the infallible signs of the approach of civilization. They were, first, the *honey-bee;* and, second, the *Methodist preacher.* (I suppose the only reason why the honey-bee won the race was, that it had the advantage of wings.) And long after the advent of these two, when churches had been erected and houses built, and men were possessed of the comforts of life, came a comfortable-looking, well-dressed, properly-behaved, and pious Episcopal clergyman. Perhaps—for it would depend upon what school of Episcopalians he belonged to—perhaps a part of his mission was to teach the doctrine, that this same Methodist preacher—who had taught the hitherto untamed savage to use the Bible instead of the tomahawk, to sing the Psalms of David instead of the war-song, and to eat the bread of life instead of the

quivering flesh of his enemies—was an interloper, had no commission from on high, and, therefore, no right to preach the word of God even to savages. If any thing would turn back the poor Indian, who had only

"Seen God in clouds, or heard him in the wind,"

it would be the unchristian aspect of such a doctrine.

I have said that, let this prosecution result as it may, it can result in nothing but harm. If the respondent is acquitted, then it is apparent that bishop, priest, and layman have united in an unjust and unchristian attempt to condemn and disgrace an innocent brother. And if he be convicted, *what then?* You may recommend the Bishop to punish—he may perform that office—*but what then?* Will it silence the respondent's voice? Will it close his lips? Will it break his spirit? Will it shut the doors of other denominations to the liberal branch of the Episcopal Church? Will there be no more efforts to effect Christian union and Christian harmony? Or will that condemnation commend the Protestant Episcopal Church to the outside world, and make it more beautiful and inviting to the great body of non-believers? Will you be able to pursue your holy calling with greater devotion and with increased thankfulness that it has been your lot to do a *good work?* Again, I ask, what is to be the result of victory? I will tell you. It will be the same that crowned the efforts of those who persecuted the early Christians. It will build up and impart new life to a good cause. You can not stay the progress of liberal opinions, nor paralyze the efforts of Christian men to effect Christian union, by obsolete canons and partisan prosecutions.

Good men will not falter when they approach the boundary-lines of parochial cures; nor will they, when armed with a commission from on high to preach the Gospel, consent to remain silent because man withholds his permission.

Because—look at this case in any light you please, construe this canon as you like—if you condemn my client, it will be because he has preached the Gospel, and for nothing else.

What is this canon which has been so much talked of, and which has been invoked to condemn the respondent? On the 13th of July, 1867, Dr. Stubbs wanted to guard his parochial cure from the *violent* intrusion of a brother minister who proposed to preach, at the request of some of his own parishioners, in the church of another people who had no pastor. He exhumed this canon from the dust of years, which in its long and quiet repose had been violated, as now construed, by every bishop, priest, and deacon in the Episcopal Church, of whom Dr. Stubbs himself was not the least guilty. This

is a matter of history and general observation; and it is admitted by the other side. It will be remembered that, when I proposed to prove an unbroken series of violations of this canon, since it was enacted, by every grade of the ministry in the Episcopal Church, it was admitted, in order to save the prosecution from the damaging effect and the mortification which the evidence in detail would produce.

And what is the difference between the cases admitted and the one proved against the respondent? For it must be conceded that in both instances the letter of the canon was violated, according to the strained interpretation of the prosecution. Mr. Tyng preached in the Church of St. James, in New-Brunswick, without the permission of Drs. Stubbs and Boggs. On the same day, Rev. Mr. Baker, of Princeton, preached in Dr. Stubbs's Church, with his permission, but without the permission of Dr. Boggs. Does Dr. Stubbs say that the permission of Dr. Boggs was *implied?* That will not do. The canon demands an *express* permission, and an *implied* permission is not enough. You shall not avail yourselves of a *liberal* construction to establish your own innocence, and of a *narrow* one to establish Mr. Tyng's guilt. Equal and exact justice is a favorite maxim of profane law, and it ought to commend itself to the minds of learned divines. The Rev. Mr. Baker violated the canon, and rendered himself amenable to the terrors of an ecclesiastical court, because he preached without the express consent of a majority of the ministers of the parochial cure in which he officiated. *One* is not a majority of *two.* It takes Drs. Boggs and Stubbs both to be a majority of themselves. It would seem, then, that the only difference between the two cases is, that Mr. Tyng committed the alleged offense *alone*, and according to *his* interpretation of the canon, *believing himself to be right;* while the Rev. Mr. Baker was guilty of a like wrong, with the aid and assistance of Dr. Stubbs. The latter, according to *his* view of the same law, as expressed in his letter to Mr. Tyng, *knowing himself to be wrong.*

It must have been mortifying in the extreme, to the accusers of Mr. Tyng, to find themselves driven, during this trial, to the necessity of admitting that the whole body of Episcopal ministers had been in the constant practice, until it had ripened into a usage, of violating this canon, under their present interpretation of its meaning. But there was no escape from it. The inconsistency of their position is in no degree lessened by the circumstances under which they claim that the violations occurred. The point of this usage, thus admitted to exist in the Episcopal Church, is, that a non-resident minister rightfully and properly preaches in a parish not his own, provided he obtains the consent of the minister alone whose church he occupies;

and he is under no obligation to obtain the consent of any other person. The argument of the other side, in justification of Mr. Baker, would, therefore, be, that he was not an intruder into the parish of Dr. Boggs, because he had obtained the express permission of Dr. Stubbs, whose church he occupied. Applying the same rule to Mr. Tyng, wherein does his offense consist? He did not obtain the consent, either of Dr. Boggs or of Dr. Stubbs, it is true; but it was because he did not propose to, nor did he, officiate in the church of either of them; but he did obtain the consent of the authorities of St. James's church, where he did officiate, as Mr. Baker obtained the consent of Dr. Stubbs before he officiated in the church of the latter, and for a like reason.

But let us look into the circumstances under which this alleged offense is said to have been committed, and it will readily be seen that Mr. Tyng was not an intruder, nor was his presence calculated to inspire the fears which seem to have taken possession of his reverend brethren, and which prompted this presentment. Mr. Christopher Meyer, a parishioner of Mr. Tyng in the city of New-York, had established his summer residence in New-Brunswick, and had frequently, prior to July, 1867, invited Mr. Tyng to partake of his hospitality. After a long delay, the invitation was accepted, and the 13th of July, 1867, was appointed for the visit. It so happened that this parishioner wanted, not only to see the face, but to hear the voice of his young and eloquent pastor; and so, of his own accord, and without Mr. Tyng's knowledge, he caused to be inserted in the local paper of New-Brunswick, a notice that Mr. Tyng would preach in St. James's church on the following Sunday. There was nothing obtrusive or officious in this act of Mr. Meyer, because the church had been erected in part by his munificence, and the Methodist congregation who occupied it were without a pastor. He did not suppose that Drs. Stubbs or Boggs had any thing to do with a church not their own, or with a congregation to whom they had never administered, and he believed that the Gospel might properly be preached to that congregation without the express permission of either of them. These notices met the eye of the Rev. Dr. Boggs, and he, overcome by fears, not that the Gospel would not be preached in its purity, but that the *peace and harmony of the Church might be impaired*, communicated to Dr. Stubbs the startling fact. He, in turn, communicated it to the Bishop of the Diocese of New-Jersey, and the result was, that Dr. Stubbs wrote the letter which has been put in evidence, in which he made known to Mr. Tyng that he was authorized by prelatical authority to say that "the law of the Church should not be violated with impunity;" and this letter, strange to say, was written with

the avowed purpose "*to preserve the unity and peace of the Church, and to promote concord among brethren.*"

I do not believe that this letter was intended to deter Mr. Tyng from preaching on the day appointed; but rather to incite him to the act, supposing that it would be aggravated by being committed after the inhibition contained in this letter. It was known that he was a man of spirit, and that, while he might have been induced to forego the appointment thus made for him, if any good reason could have been shown for it, it was well known that an implied threat would not drive him from his laudable and praiseworthy purpose. If the object of the writer had really been "to preserve the unity and peace of the Church, and to promote concord among brethren," that object would have been more effectually accomplished by a friendly call and an affectionate admonition, than by sending a letter offensive in its character and humiliating in its demands.

This is not the first time that the preaching of the Gospel has been interdicted by man. Peter and John were once commanded not to speak at all or preach in the name of their Master. They had intruded into the *cure* of the Sadducees. Their response was, "Whether it be right in the sight of God to hearken unto you more than unto God, judge ye." This would have been a fitting and appropriate reply to the letter in question.

But Mr. Tyng's offense does not consist simply in preaching on that day. It consists rather in his preaching in a Methodist church, and adapting himself, so far as he could conscientiously, to the forms of a Methodist denomination. He laid aside the robes and insignia of the Episcopal Church, to commend himself more strongly to the ways of people who had not been accustomed to their use, and thereby enlarge his capacity to do them good; and for the same reason, he read from the Psalter in use by that congregation, in connection with the liturgy of his own Church; thus, by his practices, inculcating the doctrines of religious union and Christian tolerance. That these things were the head and front of his offending is evidenced by the fact that the prosecution, although the only charge in the presentment was, that he preached without permission, took care to prove with great particularity the services which transpired in St. James's on that day. Great stress was laid upon the fact that he laid aside the gown and surplice, and preached in the plain citizen's dress. That he omitted parts of the Episcopal service, and gave out a hymn from the Methodist hymn-book. And it is even imputed to him as an aggravation of the offense, that, as a part of the worship on that day, the congregation sang, at his request, the hymn commencing:

"Hasten, sinner, to be wise,
Stay not for to-morrow's sun."

The hymn itself could not have been offensive to the refined taste or exclusive faith of the Rev. Dr. Stubbs, because it has been one of the standard hymns of the Protestant Episcopal Church for more than a century. It had, however, in his estimation probably lost its devotional beauties and inspiring effects from having passed through the profane medium of a *Methodist publication*, and been subjected to the vulgar uses of a *Methodist society.*

Mr. Tyng was selected as a prominent member of that branch of the Episcopal Church which favors equality among all evangelical denominations, and which repudiates the claim made by many of the members of that Church of an exclusive saving faith, and who would force upon all mankind the forms and ceremonies of their own peculiar creed, and would shut them out from the pale of the Christian Church unless they adopted them. Such a man was selected as a victim for condemnation and punishment, in the hope that, through him, these liberal ideas on religious subjects might be crushed out, and those who entertained them might be brought into subjection to an intolerant faith. Such men are blind to the teachings of history. They ignore the salutary lessons taught in the annals of the Church. They forget that love to man is the religion of the Bible; that a pure faith, a blameless life, a conscience void of offense toward God and toward man, without reference to the forms and tenets by which that faith is manifested to the world, should be a passport to the altar of every Christian church, and to the confidence and affection of all Christian believers.

If, instead of embracing the opportunity of doing good to his fellow-man which presented itself to him on that memorable Sunday, he had turned his steps toward St. Alban's in this city, and there participated in the hollow mockeries and idle forms which characterize the worship of that place, but which find no authority in the word of God, or in the Prayer-Book of the Episcopal Church; or if, instead of reading the Methodist Sabbath Psalter, he had read a prayer "*for the faithful departed*," found in the "Book of Hours," edited, I am informed, by Dr. Dix, of Trinity Church, and which prayer I now read from that book as follows:

"O Lord, our Redeemer, who hast purchased mankind by Thine own blood, ransoming us by Thy death from the sting of death, and giving us everlasting life by Thy resurrection: *grant rest unto all who have fallen asleep in holiness*, in the desert or in the cities, at sea or on land, and in all places, to kings, and priests, and bishops, to the solitary and the wedded, *to all ages and generations, and fit them* for Thy heavenly kingdom, where Thou livest and reignest."

I say, if he had done this, no word of censure would have fallen from the lips of those from whom proceed this presentment, nor

would any steps have been taken to vindicate the Church against that which is at this hour her greatest reproach. *Mocking God* calls forth no prelatical censure, but *preaching His word* may. This state of things can not long exist: and those who have commenced this warfare, will find in the end that, although they may accuse, arraign, try, and condemn, yet their victory will be their defeat. Episcopal ministers will continue to officiate to the Methodist people; and, in the end, the candles of St. Alban's will be snuffed out. The Church *may* be severed, but the lips of God's ministers will *not* be closed by human authority.

Let us look at the practical working of this canon, supposing it to be expounded and administered on the theory of the prosecution. If the Methodist congregation of St. James's should ever again be without a pastor, and in their need should solicit the ministrations of any one of the liberal-minded Episcopal ministers, who care not where they preach, provided they have the assurance that it has God's approval, they must stand silent; for the gates of paradise were not more strongly guarded by the flaming sword, than the domains of Dr. Stubbs by this canon. Without *his* express permission, a non-resident minister can not officiate by preaching, reading prayers, *or otherwise*, no matter how pressing the call, or how urgent the necessity. He could neither pray at the bedside of a dying friend or parishioner, nor administer *to him the holy sacrament;* nor could he as a minister conduct family prayers; for Dr. Stubbs might find it out, and give the alarm to the bishop of the diocese, by crying out, "Behold! he prayeth without my express permission," and thus subject him to canonical censure. Again, a short time since, there assembled in Philadelphia two bodies of Christian men, composed principally of eminent divines. One was a Presbyterian, and the other an Episcopal body. So far as the individuals were concerned, the convocation of these two assemblies in that city, at the same time, was purely accidental. It so happened that a large majority, if not all of these men thus assembled, entertained liberal Christian views, and had a sympathy with all well-directed efforts, without regard to creed or persuasion, to effect the salvation of men. These views, common to both assemblies, brought them together. They exchanged affectionate greetings, prayed together, exchanged visits in a body, and there was great rejoicing, that the representatives of two great evangelical churches, who had long been in the habit of looking askance at each other, had at last been brought together by the cohesive power of Christian sympathy. It was an event which those there present will never forget. Tears ran from eyes unaccustomed to weep, and all hearts were bowed with thankfulness. The Christian world rejoiced over this, and hailed it as a

harbinger of better things. What a humiliating attitude will the Protestant Episcopal Church occupy, by putting the seal of its condemnation on this event! For let the interpretation of this canon claimed by the prosecution obtain, and it at once stands condemned. For did not ministers of the Episcopal Church officiate then and there "by reading prayers *or otherwise*," contrary to the canon? and that, too, in a Presbyterian *meeting-house!* With such an interpretation of this canon, what a melancholy spectacle does the Episcopal Church present! Instead of challenging the admiration of the world, she would be the subject of its derision. The jeering infidel would be armed with another weapon of attack: for well might he claim that the practices of the Church were not in harmony with the teachings of their divine Master.

It may be said that these are extreme views of the case; but if we interpret all parts of the canon alike, which is the reasonable and just mode of interpretation, such views of it are necessarily forced upon us. If *one* part of it is relaxed by a liberal interpretation, then *all* parts should be subject to the same rule. Partisan feeling and prejudice can not carry sane men to the extent of demanding one rule of interpretatation to enable them to accomplish their own purposes in their own way, and another to relieve them from the folly and gross inconsistency in which they thereby involve themselves.

Let us consider the phraseology of this canon. Its language is: "No minister belonging to this Church shall officiate, either by preaching, reading prayers, or otherwise, in the parish, or within the parochial cure of another clergyman, unless he shall have received express permission for that purpose from the minister of the parish or cure," etc.

The question of construction in this case is, What is the meaning of the word "cure" in this canon? No intelligent, unprejudiced mind will fail to discover at once that it refers only to the *persons* of the Protestant Episcopal faith within that cure. That is the practical construction which has been put upon it in the Church from the time of its passage until very recently. It is the way in which Drs. Tyng, Newton, Muhlenberg, Dyer, Canfield, and Smith have interpreted it through long and successful ministries, unchallenged by any man save in one instance.

And you, rèverend sirs, have yourselves, each of you, put the same construction on the same word throughout your whole ministry.

Look at canon 5, immediately preceding the one under consideration, and answer me whether or not you have throughout your whole lives construed the word "cure," which occurs therein twice, not as embracing territory or non-episcopal families, but those of your own faith, attending on your own ministrations.

Listen to the language of that canon:

"Every minister of this Church shall keep a register of baptisms, confirmations, communicants, marriages, and funerals *within his cure*," etc.

"Every minister of this Church shall make out and continue, as far as practicable, a list of all families and adult persons *within his cure*," etc.

Now tell me, you reverend judges, who are called upon to condemn your brother for considering a Methodist congregation assembled *within* its own house of worship as *without* an Episcopal cure, whether you in all your lives, in the discharge of your duties as ministers of the Gospel, treated them as within it? I challenge your own practices. I invoke your own experience and convictions, as acted out in your daily life, in aid of my interpretation. I venture to say that nowhere in the archives of the Church will there be found under your hand, as Dr. Stubbs confessed that there was none under his, a list made out in pursuance of the canon last quoted, containing any family or adult person, or a "register of baptisms, communicants, marriages, or funerals," except that they were attendants under your ministry, or subjects of your pastoral charge. There can be but one reason for it, and that reason acquits Mr. Tyng as well as yourselves of all offense. It is, that the families thus omitted were not within your care or "cure," as the word is now used. If he is guilty, so are you. If he deserves punishment, so do you. Condemn him, and you condemn yourselves. Because if the individual families of a Methodist congregation are not within your cure, so as to require you to enter them upon the records of the church under this canon, then, by parity of reasoning, which commends itself to the shallowest mind, they do not get within your cure, because they assemble in their own house of worship, and therefore no express permission is necessary to preach the Gospel to them if Mr. Tyng chooses so to do. The very moment he crosses that threshold the obligations of the canon under which he is presented have no application; for he, like the congregation he addresses, is without the cure.

Give the word "cure" this interpretation, and the system is harmonious and consistent. Refuse it, and it is incongruous and unjust. Attach to it other than a meaning which it has obtained in other parts of the same system of laws, for the purpose of imputing guilt to an act which would otherwise have been innocent, and you commit a gross wrong against the individual who is affected by it, and against the Church of which you are ministers.

You have doubtless, each of you, enjoyed many opportunities of doing good, and I trust have done much to promote the welfare

of your fellow-men. But whatever those opportunities may have been in the past, or will be in the future, you will never again be placed in a position where it will lie in your power to do as much to promote the interests of the Christian Church and your fellow-men, as that which you now occupy. I pass the questions involved in this case over from my conscience to yours. I have discharged my duty, and I can do no more. Convict my client of the charge preferred against him in the presentment, and although you will not impair his usefulness, or weaken the hold he has upon the affections of the Christian community, yet through him you will inflict a wound on the Church of which he and you are ministers, which you will never live to see healed. Acquit him, and you will have the satisfaction of knowing that you have risen above all considerations other than a desire to do justice, and relieve the Protestant Episcopal Church from the reproach with which she is now threatened.

If you convict him, then let the blow come. He will not be responsible for it or its consequences. Let the *punishment* come; he can bear it. It must, by the canon, be administered in a public place; let it be the *most* public in this great city. Let Trinity ring out her loudest peals and call together a great congregation of people to look upon the Christian Martyr of the nineteenth century.

CLOSING ARGUMENT OF S. P. NASH, ESQ.

May it please this reverend Court: I approach the performance of the duty to which I have been assigned by the presentors in this case, with a very serious sense of my resposibility. Whether justly or not, whatever I shall say will be to some extent imputed to the authorities of the Church, who are supposed to have charge of this presentment; but as I think that would not be right, I hope that if in the remarks which I may make in the course of my argument there should be any thing which is unjust to them or to the cause, it will be laid to my personal inefficiency fairly to present the case for them.

It is not so interesting a duty—the one which I have to perform—as that which has fallen to my friends upon the other side. I feel it incumbent upon me to speak the words of truth and soberness. It was allowable for them, in the performance of their professional duty, to indulge in flights of imagination, and misrepresent the case before the Court; to make their arguments have a bearing beyond the tribunal sitting here, and to act upon popular opinion outside. That, I suppose, and I think I will be able to show, was the intent of this respondent, in daring this prosecution. I think it will appear from his conduct in this case, and the manner in which it has been brought

before the public, that he belongs to that Puritan party in the Church, ever restless until they either make or break. (Applause.) I say that I feel it incumbent upon me to speak here the words of truth and soberness, and I therefore consider it my first duty to call the attention of the Court again to the actual charge upon which this respondent is brought here for trial, and to show how it has been represented by the counsel upon the other side, who, I have every reason to believe, correctly represent the client who employs them; because I hold in my hand two sermons which were preached by him, and which correspond in their tone exactly with the defense which has been made here.

On Saturday last, the able advocate from the Diocese of New-Jersey, (Mr. Parker,) who has so fully presented the case for the respondent, upon the law and the canons, prefaced his remarks with a particular statement of the charge, and his argument all through went upon the basis, to use his own expression, that that was "the kernel of the case." His statements ranged themselves all around it, and his long, labored, and able speech furnished the staple of the Sunday reading of many in our community. I quote his words: "The charge," says he, "is, that being a minister of the Gospel, he preached the Gospel." Is that true? That question I put to whoever may hear my voice or take an interest in this discussion. Is that true? Suppose the reverend respondent in this case had appeared in a court of justice in which my learned friend from New-Jersey was engaged in defending a criminal according to the civil law, and, carried away by that zeal which teaches him to preach the Gospel in season and out of season, and upon every occasion, had insisted upon getting up and addressing to the magistrates there discharging their functions an eloquent sermon, and the police should put him out, would he be put out for preaching the Gospel? Suppose he had got up to-day and interrupted the very eloquent remarks of my friend who has just closed, upon the ground that a burst of zeal had come upon him and he saw a "Providence opening," and he must preach the Gospel; would this Court have listened to him? or if they had refused to do so, would it be because they did not want to hear the Gospel preached? Now, there is good sense in all things, and there is also nonsense in a great many things; and we may as well, at this point, try to get at the true kernel of this matter, in order that we may arrive at an intelligent conclusion.

One of the reverend witnesses examined here, said that upon one occasion he was in the parish of Christ Church, New-Brunswick, and married two persons there, having first applied for the consent of the rector of that church. Suppose a question had arisen about the propriety or the impropriety of getting that consent, or suppose

that consent had been refused, would a true statement of the case be that the Rector of Christ Church was opposed to Holy Matrimony? The same reverend gentleman said that, upon another occasion, he baptized an infant in that parish without asking the consent of the rector; and he said, giving his construction of the canon, that if the rector of that church had baptized that child without *his* consent, it would have been a violation of this canon. But was the Rector of St. George's, therefore, opposed to the ordinance of Baptism? Let me ask my learned and able friend from New-Jersey, who opened the discussion for the defense, if upon returning to his home that day, after the conclusion of his eloquent speech here, he had met some friend newly arrived from abroad, who had heard about his professional engagement in this case, and had asked him, "What is all this about, what has this reverened clergyman been charged with?" Would my learned friend have answered, "He has been charged with preaching the everlasting Gospel?" If he did, I think his friend would say, "Oh! yes; I understand that. I understand your professional rhetoric, but what was the *fact*—tell me just what the charge really is?" To such a question would my friend repeat the answer, "He has been charged by the authorities of the Church with preaching the everlasting Gospel, and has been brought up for trial for that offense?" (Laughter.) Now, by whom was the complaint made under which this presentment arose? It was made by two divines of New-Jersey, two Doctors of Divinity, one of them the Rev. Alfred Stubbs, for something like twenty-seven years Rector of Christ Church, a man who has sons in the ministry; and the other, the Rev. Dr. Boggs, who went, I believe, from this diocese, and who has charge of the Free Church there—a church which is open to rich and poor alike, and dependent for its support and success upon the good-will of those to whom the Gospel is preached. These are the gentlemen making the complaint. It was then presented to the Bishop of New-Jersey, and by him considered to be a sufficient case to be referred to the authorities of New-York, where this reverend respondent is canonically amenable in the first instance, for any breach of church discipline or law. The charge comes before the ecclesiastical authorities of this diocese. It takes the usual course, and is referred to a committee of three clergymen and two laymen, one of these laymen a parishioner of St. George's, and both, I believe, communicants of the Church. The presentment is brought before the ecclesiastical authorities of this diocese. The selection of a court, to consist of five clergymen, (because the accused is entitled to a trial by his peers,) is offered to him from a list of twelve, but he declines to make a selection. The Bishop of the diocese then makes a selection for him of five out of those twelve, to constitute

the court. Before this court so constituted we come, simply to ascertain the facts in the case, and to apply the law. May it please the Court, if this statement, that this respondent is arraigned here for preaching the Gospel is *not* a true statement—considering by whom this presentment has been made, and the stages by which the case has reached this point—if this is not a true statement, what is it? Is it not a calumny? I see but one answer to that question.

I am now to consider what the charge is, as I have already considered what it is not. The charge is for violating a canon of the Church in force since its organization, (I do not speak simply of the organization of the Protestant Episcopal Church,) the object of which is, by the division of labor and the harmonious arrangement of the work of various persons, all charged with preaching the Gospel, to carry on most effectively the Church's work of evangelizing the world. The object of this canon is to protect the ministers of the same Church, receiving their commissions from the same source, against interference with each other's work. It is to secure harmony and concord among brethren, as St. Paul and St. Barnabas secured harmony and concord, who, when they could not agree in occupying the same field of labor, separated, and each took his own. It is, therefore, a canon which deserves to be guarded and cherished by the Church, in view of its antiquity and its object; and so far as the idea of the older canons is adopted and set forth in the laws of our own Church, its spirit and meaning are so plain that no one need ever violate it, unless with intent or a malicious purpose. It is a canon so consonant to reason and good sense, that something like it, though not always in its exact language, exists in all churches having a government more extensive than that of a purely congregational form. It existed in the Roman Church before the Bishop of Rome undertook to exercise that very extensive authority which he now claims, and which seems something like that claimed by this respondent, the right to do whatever he pleases everywhere throughout the world. Because of the existence of this overriding Papal power in the Roman Church, this canon for the protection of individual presbyters, as well as of the independence of bishops, has become substantially obsolete in that Church, but it still exists in full force as between the clergy themselves, as I may perhaps have occasion to show. Something like it exists in the Presbyterian Church. Each presbyter, under their polity, is confined in his duties to the presbytery of which he is a member. As I read their discipline, a licentiate, before he receives holy orders, has authority to preach simply in places designated by the presbytery. He can not be ordained until some congregation is ready to receive

him; and after he has been ordained, he must not remove from one presbytery to another without the consent of both parties, the one which he leaves and the one to which he goes. I asked the witness, the Rev. Dr. Tiffany, in reference to the Methodist discipline in that respect; and he answered that he could point to no canon on the subject, but "It was expected"—I quote his own language—"that every man will attend to his own business in his own place." That is the language of the gentleman who was in the pulpit, although he could hardly be said to have "occupied it," the day that this respondent officiated in St. James's church, New-Brunswick, and who is now pastor of that congregation. Dr. Tiffany's language seems to be a sort of echo of a passage from the First Epistle of St. Peter, "But let no one of you suffer as a murderer, or as a thief, or as an evil-doer, or as a busybody in other men's matters."

I am informed by the commentators that the original Greek of which this is the English rendering, means episcopizing—playing bishop in another's diocese, (laughter,) and its equivalent was expressed by our translators by the phrase, "Being a busybody in other men's matters."

But leaving what may seem far-fetched or obscure, let us take a few steps across the centuries. I shall try not to weary the Court with citations, but wish to show the antiquity of this regulation. I quote now the 15th canon of the Council of Nice, still held, I believe, in reverent estimation even by that portion of the Church represented by this respondent—"For the taking away the custom which prevails in some places contrary to canon, it is decreed, on account of disturbances and disputes that have occurred, that neither bishop, priest, nor deacon remove from city to city; and that if any one, after the decree of the holy and great synod attempt it, all the proceedings in this case shall be null, and the party shall be restored to the church in which he was ordained."

The next canon, the 16th, is to the same effect: "No priest, deacon, nor any belonging to the clergy, ought to be received in another church, if, having left their own church, they go thither inconsiderately, without the fear of God, and regard to the canon of the church," etc.

So also is the second canon of the Council of Constantinople: "Let not bishops go out of their diocese to churches out of their bounds, nor bring confusion on the churches," etc.

The 8th canon of the Council of Ephesus mentions a complaint made by certain bishops of "an act which has been introduced contrary to the laws of the Church and the canons of the Fathers, and which affects the liberty of all;" and proceeds, "Wherefore, since evils which affect the community require more attention, inasmuch

as they cause greater hurt, ... none of the most religious bishops shall invade any other province," etc., "that the canons of the Fathers may not be transgressed, nor the pride of secular dominion be privily introduced under the appearance of a sacred office," etc.

The 5th canon of the Council of Chalcedon is to the same effect. The 6th provides that "No man is to be ordained at large, neither presbyter nor deacon; . . . . but whoever is ordained must be appointed particularly to some charge," etc. The 20th declares that the clergy "are not to be allowed to be appointed to the church of another city, but are to be contented with that in which they have been first counted worthy to minister."

Now, these are the canons of the four general councils in the Church; the first, that of Nice, where the Nicene Creed, which is read in all our churches, was framed; and these four general councils have always been held in high estimation and reverence by the Church, and are expressly declared by the fathers of the English Reformation to be of authority in the interpretation of doctrine.

I now skip across to the English isle, and come to the canons of the Council of Hertford, held in 673. The 2d canon of this council provides that, "No bishop invade the parish of another, but be content with the government of the people committed to him."

The 5th, that, "No clerk, leaving his own bishop, go up and down at his own pleasure," etc.

The 6th, that, "Strange bishops and clerks be content with the hospitality that is freely offered to them, and let not any of them exercise any priestly functions, without permission of the bishop in whose parish he is known to be."

I refer also to the 9th answer of Ecbright, Archbishop of York, A.D. 734, to the same effect; and to the 9th canon of Archbishop Cuthbert, A.D. 747. The 9th of the canons made in King Edgar's reign is, "That no priest interfere with another in any thing that concerns his minster, or his parish, or his gildship, or in any of the things which belong to him."

It is fashionable, I know, to sneer at the past, as if laws that are old were not suited to the present age. This has been, if not directly urged, at least suggested here. Do my friends upon the other side consider how far that argument goes? Is not the Bible a thing of the past? There are those who are trying to destroy it. There are those who say that the revelations contained within its pages are not in keeping with the progress of the times. But I trust that those who are represented by the respondent here do not join in that feeling, and that there are many things in the past that they are willing to stand up for yet. If not, I think they had better take off their robes; their occupation's gone. This Bible, which we all love,

did not, like the Palladium, fall from heaven, a book complete in itself. The various books of the New Testament, the four different lives of our Saviour written at different periods, the Acts of the Apostles, the letters addressed by Apostles to various churches, lastly, the Revelations of St. John the Divine, with years intervening between the composition of the first and of the last of these books, these were all collected together and discriminated from documents that were spurious (which abounded at that time, as appears by the preface to St. Luke's Gospel) by the care and diligence and loving affection of men who just preceded the bishops who sat in the Council of Nice. What kind of a gospel would this reverend respondent be preaching to-day but for the labors of those who made these canons and were willing to be bound by them?

The learned gentleman who went over the history of our canon on Saturday, quoted, from Hoffman's Law of the Church, a letter of Pope Dionysius—and gave a very fair and accurate translation of it—which is precisely in keeping with these older canons. The successors of that Pope did, it is true, as I have intimated, themselves violate the territorial independence of the clergy which was intended to be secured by these canons. And this was one of the leading causes of that glorious Reformation which my friends on the other side stand up for. I have read you in English, from an accredited translation, these ancient canons of the Church. I will read you now the canon of our Church which is alleged to have been violated. With the sound of these ancient canons, some of them 1500 years old, still in your ears, what do you think of this? "No minister belonging to this Church shall officiate, either by preaching, reading prayers, or otherwise, in the parish, or within the parochial cure, of another clergyman, unless he have received express permission for that purpose from the minister of the parish or cure," etc. It seems to me the harmonious line is complete.

Is there any thing in the wisdom of our ancestors? Does our Church owe nothing to those who have gone before? Are we to set at naught, at the instance of every young man who chooses to go into the ministry with notions of his own, all the restraints of the past? This canon was made to secure peace and concord among brethren in the ministry, by protecting the independence of each within a certain recognized field of labor. It recognizes the benefit and necessity of that division of labor without which the best-directed efforts lead only to confusion. No civil government can accomplish its purpose without such a division of labor, without assigning separate work to separate departments, and having for each department certain laws and regulations; and no church can do its work faithfully and successfully without similar laws. Suppose no arrangement made for a

division of labor, and the preachers all huddled together in one place, feeling that that was *their* field of labor; what would become of the other fields? I need not go any further than this very case, to show that the violation of this canon prevented the preaching of the Gospel; for if the respondent had been at home, preaching in his own church, Dr. Tiffany would have been at home, preaching in his, and there would have been two sermons that day instead of one, unless they shall change their ground on the other side, and say that Dr. Tiffany would not have preached the Gospel, which would hardly do after the eloquent and touching description of the labors of the Methodists which has fallen from the lips of my friend who has just closed. We have a right to assume that Dr. Tiffany would have preached the Gospel if he had not been crowded out of his own church on that day, and that, if he had preached there, this respondent would not have done so. Therefore it took two clergymen to preach the Gospel in one place on that day, when each might have preached in his own place. Suppose other ministers should think that the Church of the Holy Trinity, New-York, was the particular place where the Gospel ought to be preached by them; what would be the result? I have no doubt that would be a very attractive place to many a weary missionary now laboring in a distant field, not knowing one day whether the next will find any bread in the parsonage for his children, and that he might think that church just the place for him to preach the Gospel. According to that construction of the canon by which my friends on the other side apply it to an exchange of pulpits, if this poor missionary could get a majority of the clergy in the city of New-York to say he ought to be allowed to preach the Gospel in the Church of the Holy Trinity, he would have a right to do it. But I don't think that the respondent here, with the "spirit" which has been attributed to him by my learned friend who last spoke, would submit to such a claim. To conclude this branch of the subject, is not the liberty of preaching the Gospel the liberty of all clergymen who have authority to preach, and not exclusively the liberty of this respondent? Has he the right to go roaming over the world preaching the Gospel to the disturbance of others who have an equal right with himself to preach it? If not, then he and they must come to some understanding between themselves as to how they will divide their labors. This understanding has been reached and confirmed by the unanimous voice of the Church from the beginning, and it is, in effect, that each man shall stay and labor in his own place.

But again I refer to the time-honored formularies of our Church; to the very commission which was given to the respondent by the Bishop at the time when holy hands were laid upon him, and he received his authority, or at least (in the lowest view of it) the certi-

fication to the Church of his authority to minister at her altars. "Then the bishop shall deliver unto every one of them, kneeling, the Bible into his hand, saying, Take thou authority to preach the Word of God, and to minister the holy Sacraments in the congregation where thou shalt be lawfully appointed thereunto." That is the authority of this respondent. If he has any other, it depends upon some inward call of which we know nothing; but this is his commission in the Protestant Episcopal Church.

We have shown by the evidence in this case that, at the time of the act complained of, this respondent was rector of the Church of the Holy Trinity in the city of New-York. According to his report to the Convention, he had in his parish 225 families, comprising 1000 individuals, besides a mission chapel. That was the field of labor assigned to him by the Church, and where he had authority to execute in the Church the functions of a minister. He could not have got his priest's orders without having some place wherein to minister. I need not refer to the canon on that subject, which provides that no bishop shall ordain a priest in this Church until he has a title—which means that he must either have a call from a congregation, or be a missionary under the ecclesiastical authority of the diocese to which he belongs, or in the employment of some missionary society recognized by the General Convention. Now, has this respondent nothing to do at home? Let us see. He can preach seven hundred and twenty times in the year. He may visit the poor within the circuit of whatever he may choose to call his parish. He is charged in the ordination office with the duty of making such visitations, and of administering the Sacraments. I don't know how others may feel; but if I had such a charge, I think I should not go further to look for additional responsibility. If this respondent has a serious sense of his responsibility for the thousand souls committed to his charge in the parish of Holy Trinity, besides those whom, according to his construction of the canon, he has no right to put upon his parish list, but who still have the claim upon him of a common humanity—if he has a sense of these responsibilities, and is satisfied that he has faithfully discharged all the duties which they involve, why, then, perhaps he has time to go over and evangelize New-Jersey. (Laughter.) At the time of this alleged offense he was no unattached priest. He had an opening at home for all his zeal, and if he felt that he could not preach to a large enough congregation, the "liberty of unlicensed printing" allowed him to preach to the world at large, or to as many as would read his productions. There is no canon in the Church, therefore, which infringes in any way the exercise of his faculty of preaching; so that he did not need to go, like a cuckoo, to another bird's nest. Has the respondent among his peo-

ple no men given up to mammon, no women devoted to fashion, no sinners, no sterile saints? Has he no practising to do, as well as preaching? I have listened to sermons for many years, but I begin to feel that the best preaching to me is a good example. I say that the respondent had work enough to do at home, and that there was no call for him to go to New-Jersey. One reverend witness here said that he considered it his duty to preach wherever there was a "providence opened" to him. Well, there is a kind of religious language used at times which I desire to treat with respect, but of which, considering that I am responsible for a due use of my intellectual faculties, I do sometimes earnestly desire to know the meaning. I know that there is a certain class of persons in the world who look upon nearly every thing that happens as a providence, and theirs is no doubt a pious state of mind; but the difficulty is, that they are apt to select their providences, and not to take every thing as a providence, but only such things as suit them. Now, I suppose the general order of the Church is a providence, in which most of its members are disposed to acquiesce. The existence of a canon of any kind in the Church is, I suppose, as much a providence as an invitation from Mr. Christopher Meyer. (Laughter.) I should be disposed so to consider it; and I do not see how those who talk in this way about providences can consistently neglect all those great providences, which are certainly as binding upon them as their special providences can be upon us. I should consider the Ten Commandments, for instance, a providence in a certain sense, and no matter what my private wishes may be, I do not think that any invitation from any body—though it, too, might be a providence—ought to induce me to break them. I say again, therefore, that I can not see any particular cause for this respondent to go to New-Jersey at that time. There certainly was no necessity of his going there to preach the Gospel, because the Gospel was already preached, or to be preached, there. There were two rectors in good standing in the Church to which the respondent belongs, and it appears in evidence that there was also a Presbyterian church and a Dutch Reformed church in that city; and it also appears that, but for this respondent going there, the pulpit of the Methodist church would have been supplied by a person duly invited to officiate.

The invitation to the respondent to preach in New-Jersey was then no urgent call; it was altogether of a social and friendly character. There was not, if we are to use language with any common sense, any such thing as what Dr. Newton called a "providential opening." I have shown that the respondent had a sufficiently large field of labor at home, and that there was no necessity, in his case, to look abroad for providences.

Now, let me come to the facts of the case; and here I want to be

somewhat minute and in exact accordance with the evidence. The respondent arrived at New-Brunswick, it would appear, upon a postponed invitation, on Saturday afternoon. His coming had been heralded by the faithful member of his congregation (who was President of the board of trustees of the Methodist Episcopal Church) and the New-Brunswick paper of the Wednesday previous had announced that a Fifth Avenue clergyman from New-York would grace St. James's church on the following Sunday. Dr. Tiffany, however, who then had charge of a congregation in Chicago, and had received from the authorities of this Methodist church, from all the five trustees, an invitation to become the pastor, to take effect in October, had agreed for the month of July, which he had at his disposal, to supply the pulpit of St. James's church. He arrived from his long journey on the same day, and possibly by the same train with this respondent. Immediately upon his arrival, some one informed him that there was likely to be some little conflict—that Mr. Tyng, of New-York, had been advertised to fill the pulpit of that church on the succeeding Sunday. Dr. Tiffany at once went across the river to see Mr. Tyng, and, says he, "As far as I had the right to do so, I put the church at his disposal for the next day, for such service as he might see fit to hold." What did Mr. Tyng do? I inquired of Dr. Tiffany whether Mr. Tyng did not then inform him that he had received an objection from the rectors of his own Church to his officiating in New-Brunswick. The doctor said he did. Did Mr. Tyng avail himself of that opportunity, that providence that was opened to him, to be as magnanimous to his brethren in the ministry as Dr. Tiffany was to him? Was not that an opportunity for him to retreat gracefully, and to show that spirit of Christian courtesy which has been so sneered at by the counsel on the other side, as though it had no place in the character of a Christian minister? Can any one give any reason why he did not avail himself of this opportunity, except that he was determined to brave out this thing, to thrust himself before the public gaze as a martyr, and, in a measure, to bring disunion and ruin upon his Church? That was the secret of it—that party spirit which overrides all other considerations, which plays with the texts of the Gospel, and which, for its own ill-considered purposes, sets at naught all considerations of Christian courtesy and common propriety.

But it is said, by my friend upon the other side, that these gentlemen, the rectors of New-Brunswick, instead of writing him a letter, ought to have called upon him and labored with him; that he had too much spirit to notice a letter; that he was not going to be put down in his liberty of prophesying; that there was a great principle involved, overriding all other considerations. Now, I will tell you

what that "principle" is. It is contained in the solemn "Declaration" made by these very men who, some of them, have come here to testify; and it is, that the ministers in the Protestant Episcopal Church, who do not preach the Low Church Gospel, do not preach the Gospel of Christ, and that their office, their standing in the ministry, their existence, may be ignored, because they do not preach what these men call the Gospel of Christ. That is the principle, and here it is in the document signed by Richard Newton, D.D., a witness here; John Cotton Smith, D.D., a witness here; Heman Dyer, D.D., a witness here; E. H. Canfield, D.D., a witness here; Stephen H. Tyng, Sr., D.D., a witness here; Stephen H. Tyng, Jr., the respondent here; all declaring to the world that certain ministers of the Protestant Episcopal Church do not preach the Gospel of Christ. Now, do they mean that? Not to do them injustice, I read their own language:

"We feel compelled to affirm that, in many of the pulpits of our Church, another gospel is preached, which is not the Gospel of Christ. The church needs to be awakened to its peril. A paramount duty is imposed upon our clergy and our missionary organizations to see that, so far as they are able, the pure Word of God shall be preached everywhere in our land. We can not yield this liberty and obligation to any claim of territorial jurisdiction, and we hereby express our sympathy with the resistance which is made, in this respect, to the attempted enforcement of false constructions of canonical law."

Now, if they are right in that, they are justified. But I ask, what is the Gospel that is preached in these other churches? There are very serious things in Holy Writ on that subject. He who does not preach the Gospel of Christ preaches the Gospel of Antichrist. Do these gentlemen mean to say that of those who do not agree with them? Will they receive ordination from the hands of a bishop holding these same views, and then turn round and charge him with preaching the Gospel of Antichrist? Will they receive the communion from the hands of these same ministers, and yet charge them with preaching the Gospel of Antichrist? Will they meet them in conventions and treat them as brethren, and still charge that they preach the Gospel of Antichrist? The men who signed this Declaration do not know what they are saying. (Laughter.) The only ground upon which they can be pardoned is, that they are densely ignorant of what their language means. (Laughter, and expressions of approval and disapproval.)

The CHAIRMAN. These demonstrations of applause, or of non-agreement with the counsel in his argument or in his language, must be stopped.

Mr. NASH. Now, if in this case there had been no opening for retreat—if this respondent had said to his reverend brethren, "This

congregation is without a pastor, and notice has been very extensively given that I am to preach. I do not like to disappoint them; I do not intend to infringe upon your rights; I understand your construction of the canon, and, as I am in your parish, perhaps I ought to acquiesce in it, as I trust you would acquiesce in mine if you were in my parish. Overlook this occasion, and nothing more shall come of it:" if he had said this, this charge would never have been presented. And I think that is about what the reverend respondent here ought to have said, and what, if he ever preaches to his own people upon such topics, he probably would say to them by way of instruction. I do not think, at all events, that there would have been any thing in that inconsistent with the Gospel. To be sure, it would have been a little bit of professional politeness, but I don't think there was any strong overruling "providence" in the case that made professional politeness out of place. The essence of courtesy is the Golden Rule of Our Lord, enforced over and over again in the Epistles of St. Peter and St. Paul—indeed, the Epistles are full of it. Be gentle; be courteous. But it is said, on the other side, that the same spirit of courtesy should have actuated the rectors of Christ Church and the Church of St. John the Evangelist; to which I agree. If this respondent had made a single word of explanation, it should have been gladly received. I offered to give in evidence, for the purpose of showing how this affair originated, a correspondence which had taken place previously between Dr. McClintock, and Bishop Odenheimer, and Dr. Stubbs, Rector of Christ Church, in reference to supplying this Church of St. James with Episcopal services. That was excluded upon the ground, I suppose, that no offer was made to connect this respondent with it, and, therefore, his cause should not be prejudiced by letting it in. It would have been an explanation of the conduct of Dr. Stubbs and Dr. Boggs in this matter; but they are not on trial here, and I suppose that the general doctrine contended for by the counsel upon the other side, that, in all cases of doubt, when there is no evidence to the contrary, the law imputes the best motives to whatever action a person may feel bound to take, ought to apply to them. I may say, however, that there was a peculiar situation of things at New-Brunswick which may throw some light on their course.

Mr. PARKER. If you desire to use that evidence, and will admit what is the fact, that the Rev. Mr. Tyng knew nothing whatever about it, you can read the correspondence now.

Mr. NASH. I do not care to read it. I can with propriety make all the allusions to it that I need to make. It is already in evidence, from the parochial reports made to the New-Jersey Convention, that Dr. Boggs was at that time the minister in charge of a new free

Episcopal church. It was a struggling enterprise. It was a *free* church, and in that, at least, should commend itself to the sympathies of all good men. It was an attempt to give the ministrations of our Church to all without distinction of class. This church was in a suburban part of the city. It had been founded by the rector of Christ Church a few years before, and it was sustained by him from Christ Church until it had lately been made an independent organization, and Dr. Boggs had been called to be its rector. I do not know whether, according to this Declaration which I have just read, it would be the duty of the gentlemen who signed it to crush out that enterprise or not. I think it would, upon the construction which the paper fairly bears. I think the signers of the Declaration might feel that they were doing God service by any sort of affiliation with other denominations in New-Brunswick which would break down that free church, on their theory that the Gospel was not preached in it. One of the reverend signers, however, testified that, in his judgment, when such is the purpose of an intrusion into another parish, it is the basest kind of intrusion—if I recollect his language correctly. Now, let us look a moment at the Church of St. James. It belonged to what is called the Methodist Episcopal Church. That Church retains many customs of the Episcopal Church, and uses large portions of its Liturgy, and there is inherent in it a large portion of the spirit of the Church from which it took its origin—for it went out from the Church of England, and John Wesley, its founder, was a devout priest of the English Church. Well, this Church of St. James, at that time without a pastor, was a sort of semi-Episcopal church. It was not the old-fashioned Methodist church which comes to one's mind when a Methodist church is spoken of—a plain, barn-like building, painted white, without bell or steeple, or any such thing; but it was, as Dr. Tiffany describes it, one of the finest church edifices in the State of New-Jersey, Gothic or Norman in its architecture, with stained-glass windows, and attractive in many of those things which have an influence in drawing indifferent persons within the walls of a sacred edifice. Such means of attracting the attention and attendance of the indifferent are now used, I believe, by all. It is not considered particularly ritualistic to make a church attractive, to make its music pleasing, or to adopt any innocent means of tempting those who care nothing for religion to hear occasionally the word of God.

Apart from this, St. James's church had as President of its board of trustees, a gentleman calling himself an Episcopalian—I say *calling* himself an Episcopalian, because, when a man appears in two different characters, it is difficult to say which is his real one. This gentleman was baptized in the Episcopal Church, but he had never been a communicant. In the winter-time he was an Episcopalian, in

the summer time he was a Methodist. (Laughter.) He was a member of this respondent's congregation to such an extent that the respondent deemed that he had a right to follow him and his family into another diocese; and in that diocese he was a member of the Methodist Episcopal Church. It is not for me to settle his *status*. I leave that for the Court. He had given $18,000 to that Methodist place of worship, and, of course, was interested to that extent in the success of the enterprise. This money, thus devoted to the support of Methodism, would have been very acceptable to this little free Episcopal church. The people that St. James's church was drawing away would have helped to support that free church, and we often hear that those "who wait at the altar are partakers with the altar." At any rate, in this country, where no church is entitled to receive any aid except from those who choose to give it, it is evident that the success of any enterprise of church extension depends upon the support and good-will of the laity.

I have nothing to say in reference to the clergymen connected with that Methodist Episcopal Church of St. James except what is to their honor. Dr. McClintock's conduct throughout the whole transaction was straightforward, and no fault can be found, so far as I know, with any thing that either he or Dr. Tiffany has done or said in this matter. Although not bound by the laws of our Church, they seem to have recognized in every stage of this transaction, from first to last, the ordinary claims of courtesy. Dr. McClintock's project of supplying the pulpit of St. James's church with Episcopal services had been given up, as Dr. Stubbs supposed; and therefore he was very much surprised to find that the reverend respondent in this case was about to contribute his mite, whether wittingly or unwittingly, to renew a scheme so detrimental to the free chapel of St. John the Evangelist.

Now, I ask, what it is to those who are not theologians nor familiar with Church doctrine and discipline, what it is to the world at large which makes a church an Episcopal church? They do not always see the bishop there, and it is not that. They know, to be sure, that there is a bishop somewhere, but it is not that which in their eyes makes a church Episcopal. Nor is it the stained-glass windows, or the Gothic architecture; for these, though more common in Episcopal churches, are in other churches also. It is not entirely the different style of music, although there may, to the initiated, be a difference in that. It is the liturgical worship which strikes the minds of most persons, rather than the doctrines or polity which, upon careful examination, are found to distinguish the Episcopal Church from other bodies. And it was the Episcopal form of worship that they were simulating in that church of St. James. By a

liturgical service, though mutilated, they were conveying the impression to the community of New-Brunswick that this was about as good an Episcopal church as that of Dr. Boggs; and if they could clinch that characteristic of it by having the services of a regular and well-known Protestant Episcopal minister "from Fifth avenue, New-York," what more was necessary?

I think I have said enough to show that the course which these reverend gentlemen took in the matter was not without justification—especially as the respondent made no answer to the letter which they sent him, offered no apology or explanation, but went on with his head in the air as though there were no such persons in the ministry as the rector of Christ Church or the rector of St. John the Evangelist. What could they do other than what they did under such circumstances? They did nothing except to follow literally the course pointed out by the canons of the Church, as has been detailed here. They appealed to a law of the Church, a law recognized by all parties, and which has been in the Church from the beginning. For doing that, they are charged with persecuting an innocent "martyr"!

Now, what should they have done? Acquiesce, submit? Perhaps it is the duty of those who preach the Gospel, always to submit. Let us see if that has always been the rule in such cases.

Two or three years ago, in 1865, I think, there were proceedings going on in this diocese which many of the clergy considered irregular, and at which they felt aggrieved. I do not need to state now what they were; but the Bishop of the diocese, as the administrator of its affairs and in the exercise of what he considered to be his prerogative and his duty, issued a pastoral upon the subject, mild in temper, courteous in tone, giving no names, mentioning no instances, but simply in an admonitory way calling the attention of his clergy generally to the regulations of the Church in reference to certain subjects. One would not suppose, ordinarily, that that would be considered as any very great stretch of Episcopal prerogative. Four clergymen, however, (all of them have been witnesses here on the part of the defense,) at once rushed into print, and, intimating to the bishop that he had exceeded his authority, circulated their replies broadcast over the land. They snubbed the Bishop with the canons. This is the language of one of them: "By section 10, canon 18, title 1, the bishop is recommended to deliver a *charge* to the *clergy* of his diocese, at least once in three years, and also from time to time to address to the *people* of his diocese *pastoral letters* on some points of Christian doctrine, worship, or manners." He then goes on to say, "This is neither a *charge delivered* to the *clergy* nor a *pastoral* addressed to the *people*. If the Bishop desired to give *advice* or suggest a warning to the 'few who he hoped had acted hastily,' it could

easily have been done in private, and any friendly counsel thus given would have been welcomed and allowed to have its due influence; but the document before us is obviously of another character. So all understand it, and so it was doubtless intended it should be regarded. It *judges of facts*, it renders a *verdict*, it *interprets* the *canons*, it *passes sentences of judgment*—it does all this *officially*, without any legal inquiry as to the facts, without notice to the accused, without any canonical authority to do, or pretend to do, a single one of these things." And the paper goes on to state the provisions of the canon which prescribe the bishop's duty if a minister be accused. (Review, etc., by E. H. Canfield, p. 4.) Dr. Canfield here tosses the canons in the Bishop's face, saying in effect, "If we have done any thing wrong, why don't you try us according to law? As for giving us advice in this way, we won't submit to it."

The Rev. Dr. Tyng, on the first page of his reply, quotes the same canons and intimates that the Bishop's paper was extra-canonical, and that he had exceeded the authority of his office.

This is how these gentlemen treat what they regard as an unwarrantable interference on the part of the Bishop.

Now what could be done to please this respondent? This plain case comes to this diocese from the Bishop of New-Jersey. It is presented to the Standing Committee, (the Bishop of this diocese being then in Europe,) and the requirements of the canon all followed. The accused is informed of the charge, but takes no notice of it. If nothing is done with the charge, at the expiration of three months it would be the duty of the Bishop of New-Jersey to see that it is prosecuted there; and so the committee to whom it was referred, finding the facts alleged, to be true, and believing that those facts constitute a violation of the canon, present the matter in the form of a plain, naked statement of facts, that on such a day this accused, within the city of New-Brunswick and within the parochial cure of the rector of Christ Church and the rector of the Church of St. John the Evangelist, preached without the consent of those ministers. It would seem that this was not so serious a thing that it might not be arranged; but it was a great thing to make capital out of, and we have seen how it has been used.

I stop here a moment to notice the very impertinent letter, which a person calling himself Jay Cooke has addressed to each member of this Court, I believe, and which forms a part of the record in this case. The letter appears to have been written in Philadelphia, and therefore, I suppose, the writer felt himself entirely at liberty to say impudent things of the Bishop of New-York, and so he writes thus: "If I understand it, Bishop Potter does not hesitate to enter the

walls of St. Alban's, recognizing the Romish practices enacted there by confirming a class."

Now, did that man know what he was writing about or not? If he did not, the simplest thing that he could have done would have been to keep quiet. Has he a right, because he has made his millions in selling government bonds, to lecture the authorities of the Church in regard to their duties? Does simony prevail to the extent that any man who is wealthy may think that he can dictate the conclusions to which a Court like this shall come? It is proper that I should say a word or two on this subject, because of the ignorance that prevails in some quarters in reference to a bishop's duty. The bishop of a diocese is not an ecclesiastical prosecutor, who is to go about to spy out offenses against the rules or canons of the Church. The bishop is ultimately to be the judge in all cases of ecclesiastical proceedings within his diocese; and it is a duty that he owes to the Church, as well as to all the parties concerned, that he should keep himself free from deciding in advance, either the facts or the law in any case. There is no church in the world in which the parochial clergy have a greater sense of their own independence than the Protestant Episcopal Church; and they do not expect their bishop to be on the watch to make complaints about them. He enters their churches on his regular visitations, and if he finds nothing to condemn, he should be satisfied. If any three presbyters make a complaint, it is his duty to notice it. If such a complaint be made against the parties officiating in St. Alban's, with proper specifications, I think I may safely pledge the American Church Union, to which my friend has referred, to stand by the authorities of the diocese and the decision of the Church upon this subject. We mean to sustain the discipline of the Church; but we do not mean to take up every paragraph that may appear, and make it the ground for a presentment.

A word or two more about St. Alban's. I should like to have the gentlemen, who had the declaration which was signed by twenty-eight bishops, distributed at the door of St. Alban's, among the people as they came out, tell me what *law* applies to the ceremonial of the Protestant Episcopal Church in the United States under which a presentment can be made. We have the views in print of two of the most eminent canonists in this country, (one of them now gone to his rest—may he sleep in peace!) who were divided in opinion how far the English law on the subject of rites and ceremonies applies to this Church; and if they could not agree, who is to decide? But suppose the English law does apply, then what is the law in England? Accept the English law governing rites and ceremonies, and you are more at sea than ever.

Now, whether this should be the subject of legislation by the

Church is a question. But why will ignorant men write for the newspapers about it, and complain that the Bishop of New-York does not proceed against those who officiate at St. Alban's? If the Bishop of New-York should refuse to confirm at St. Alban's a class of children, who had been properly instructed, because he did not like some things that were going on there, he would, it seems to me, fail in duty. If he goes there, and sees any thing amiss, and gives a friendly, a fatherly, a godly warning to those in charge, and they refuse to heed it, upon the ground of their independence——

Mr. FULLERTON. But has he given the warning?

Mr. NASH. What the Bishop of New-York has done in the way of giving private admonition, I know not. It is no man's business but his own. He receives his office from a source to which alone he is accountable for the manner in which he exercises it.

I must beg pardon of the Court for the time I have spent apart from the real question at issue; but when the counsel for the defense have avoided that question, and have given us five or six hours of ingenious and eloquent argumentation upon matters foreign to the case, I feel that I should be doing injustice to those for whom I act here, and to all who have the true interests of the Church at heart, if I did not make some attempt to expose the inconsistencies and exaggerations which have been brought into the case, and the unjust aspersions and calumnies for which the defense has been made the pretext.

I may be pardoned, I suppose, for saying now a word about the manner of this defense. I will take it for granted that, in putting himself into the hands of counsel, this reverend respondent means to stand by their action, and that they have not misconstrued his desires or done any thing not in accordance with them. We spent, I think, three days in taking testimony, and no one could well take a more technical course than this respondent has done, in contesting the facts which were alleged and to be proved. I do not dispute his right to do so; but I am considering how far that kind of defense is consistent with the attitude of a "glorious martyr." There was nothing in these three days' testimony that could not have been managed by stipulation between counsel in five minutes. Whether they thought that, by making the duties of the presentors and of the Court (who fill here a thankless office) as arduous as possible, they could check any future attempt to enforce the discipline of the Church, or whether they thought that, the longer this trial was protracted, the greater opportunity there would be for exciting the public mind about it, is not important. I have an abiding faith, not only in the heathen maxim, that Truth is mighty and will prevail, but also in the promise of her Head that He will be with His Church to the end of the

world, and that all strifes, all dissensions, all troubles will be overruled, and good come out of what seems evil.

But the defense have appealed here to their canonical rights; and therefore, I come now to a consideration of their canonical obligations.

Counsel have argued that the act of the respondent, being only an occasional act, was not an "officiating."

But "officiate" means a single act as well as a series of acts. It means both or either, as the case may be. Several canons have been cited upon the other side, where the word was used in the latter sense.

In subdivision 2, of section 11, of canon 13, title 1, it is used in the former: "To enable the bishop, who may be rector of a church, to make his official visitation, it shall be the duty of the clergy .... to *officiate* for him in the performance of his parochial duties," etc.

Now, clearly, the word "officiate" here means to officiate occasionally; it may be, one Sunday only.

The word is also used in the single sense in sub. 2, of section 2, of canon 6, and also in section 1, of canon 10, of title 1.

But I need not go to the canons for this. One of the most important witnesses on the part of the defense (although in another place I think he holds the contrary) says that he *officiated* in New-Brunswick on one occasion, marrying a couple there, and that he asked the consent of the rector of Christ Church; and in the same testimony he says that if the rector of Christ Church had baptized a certain child—the child of a member of *his* church in New-York, temporarily residing in New-Brunswick—without *his* consent, that act would have been a violation of the canon in question. How would that act have been a violation of the canon unless it were an *officiating?* But this point, it seems to me, is too plain, and I will not dwell longer upon it.

Now, if one act constitutes officiating, why then, of course, other things being out of the way, the preaching one day in New-Brunswick was an *officiating*, within the meaning of the canon; but if preaching on one Sunday does not constitute an officiating, then will my friends upon the other side say how many such acts would?

Suppose that the reverend gentlemen who have signed this Declaration, which they all "stand by," chose to go, one after another, and officiate in St. James's Methodist Episcopal Church in New-Brunswick, would that be a violation of the canon by any one of them, or by them all? Of course, they could not be tried together, because, in order to try them in that way, you would have to make out a conspiracy to officiate, and there is no such thing known under our canon laws. Officiating is made uncanonical under certain cir-

cumstances; but each offender is to be punished for his own sins, and not for those of others. What I have said disposes of the question of officiating.

Now I come to another matter, which has been made a puzzle of by the counsel upon the other side—the exchange of pulpits between ministers of the Church. The counsel interpreted the admission which we made, as to the usage on this point, as an admission that all the clergy of the Church have been guilty of violating this canon from time immemorial. But the true view of the canon shows that it does not apply to the church edifice, and so does not affect the exchange of pulpits; for church canons, like other laws, must be construed in reference to the evils they were made to prevent, and the rights that needed to be secured.

The "parish or parochial cure" named in this canon means the territory outside of the church edifice, and not the church edifice itself. The inclosure of so many feet square, with its pulpit, its communion-table or altar, its chancel, its pews, needs no protection from the canons of the Church. The law of the land protects it. "No person shall willfully disturb, interrupt, or disquiet any assemblage of people met for religious worship .... by rude and indecent behavior, or by making a noise, either within the place of worship or so near it as to disturb the order and solemnity of the meeting."

This is the law that protects a minister within his church and pulpit; and it has been frequently enforced in this State. I cite it from the Revised Statutes, vol. i. p. 674, (marginal paging.) The same law has existed from the earliest legislation in our State, and it is a reënactment, in this country, of a statute of William and Mary.

There can be no doubt that this construction of the canon, which applies it to the territory outside the church, is the correct one; for, take the case which has been so often presented to this Court, the case of several churches in one city, or other civil division, without any separation by parish lines between them, as is the case in the city of New-York. It is most triumphantly asked of Dr. Stubbs, "Did you not ever preach in any church in the city of New-York, without the consent of a majority of the rectors in the city?" Of course, he has done so, and the invitation of the minister in charge was a sufficient authority. But suppose he applied for and received the consent of a majority of the rectors in the city of New-York, would this have allowed him to preach in the pulpit in which he did preach, without the consent of the minister of that church? If it was necessary to get the consent of a majority of the rectors of the city, in order to preach in that church, then that consent would give permission to preach without the consent of its minister.

But that is an absurd construction of the canon, which was never intended to apply to a minister's own church edifice, nor, consequently, to preaching in it by consent. He does not need any canon to protect him there. What he needs is a canon to protect him in the territory around that edifice—in his parish—where the law of the land does not protect him.

This, I think, gets rid of the difficulty which has been thrown around the construction of this canon.

And does not a clergyman need such a protection for himself and for his flock residing around his church? The ordinary presumption, of course, should be, that every minister of our Church preaches the Gospel as understood by the Church; and therefore, that a minister going into another parish to preach, would preach the Gospel in that parish. But it has been solemnly declared, in the Declaration signed by the reverend respondent in this case, that many ministers do not preach the Gospel. If that be the case, and just so far as that is the case, the presumption that this reverend respondent preached the Gospel in St. James's church on that Sunday, loses force; because, if one clergyman of the Church fails to preach the Gospel, and preaches something else, surely another may; and if we once depart from the legal presumption that all clergymen of the Church preach the Gospel, then we don't know where we are—we don't know who are those that do, or who are those that do not. Assuming, however, that it is the desire of the Church to have the Gospel preached everywhere, as distinguished from what is not the Gospel, she appoints her ministers, each in his parish, to do it.

But who is to decide as to the doctrine preached? Is the law to be considered as violated or not, according to what the accused preaches? There is nothing to that effect in it. Or is it not to be construed as simply confining such minister to his own limits, with his own responsibilities for his preaching? I so hold, and say, therefore, that this canon, which protects a minister in a certain territory, which is, ordinarily, the territory or sphere of his personal influence—the territory or circuit within which people attend his church—is a wise canon, calculated to preserve the peace and harmony of the Church; and the construction I have given it is not only a reasonable construction, but it is the only construction that is needed to be given to it, and the one that is carried out by that portion of subdivision 2 which defines what a parish is: "Parochial boundaries shall be the limits, as now fixed by law, of any village, town, township, incorporated borough, city," etc.

Any corporate municipal body, any political division which has fixed lines, constitutes the parish, and its limits are the limits of the parish. But for that provision, there might be difficulty in deter-

mining whether a man's church edifice was not the boundary of his parish; but, as a different definition is given to a parish boundary, the church-edifice definition must be dropped out of view.

I think the Court will find, upon a careful examination of the canon, in view of the mischief which was to be prevented, and the need of legislation to prevent it—and for this rule of construing the canon I adopt the argument of my friend upon the other side, who spoke on Saturday [Mr. Parker]—that this is the true, legitimate, and proper meaning of this canon, and that the parish or parochial cure of any minister of the Church is the space or territory outside of and around his church edifice, within the boundaries of the city or town in which his church is. If those boundaries are too large for one parish, the law of the Church provides for a division of the territory by the incorporation of another parish, and facilitates, in this way, the growth of the Church; and I think the Court will find, on comparing the canon on the same subject—relating to the division of parishes, and the organization of new parishes out of existing parishes—that the construction for which I contend is harmonious throughout.

A difficulty has been suggested in reference to the application of the canon to a minister's parishioners living over the boundaries of his parish. Now, I can not agree with the view taken by Rev. Dr. Tyng, that, in the summer season, when his large and fashionable congregation is scattered to the four quarters of the globe, almost, his parish expands accordingly. If he were to follow his parishioners, he might have to follow some of them up the Nile; perhaps some into the city of Rome; and how he would exercise his parochial rights in such places, and under such circumstances, it is a little difficult for me to see. However, to a certain extent, the view is true—that the term *parochial cure* may have a larger and more liberal interpretation than the word *parish*. The term *parochial cure* does seem to imply the families who belong to the congregation of the minister; and, undoubtedly, a fair and liberal interpretation of the canon requires that a minister who is pastor of a flock may minister to its members, to a certain extent, (in their residences, for instance,) outside of his parish limits. For instance, to take one of the illustrations used upon the other side: Dr. Stubbs had a parishioner living across the river from New-Brunswick, in the township of Piscataqua; that parishioner might belong to the territorial parish of another clergyman; but Dr. Stubbs might be permitted, without violation of the canon, to go across the river and administer to him such services as a private Christian might require of his pastor. But the fact that one of his parishioners lived across the river certainly would not give him a right to go over there and hire a school-house,

and there preach to another congregation. Ministerial service consists partly in preaching; but the office of preacher, as I understand it, is to be exercised in the congregation—it supposes a congregation. The canon requires that at such services Morning Prayer shall be used, according to the Prayer-Book. It supposes an assembly of people in a public place of worship, where all may come; but to go to a private house, to administer any of the rites of the Church, is not preaching, does not presume the existence of any congregation, and does not justify the assembling in a public place of a congregation, under color of ministering to an individual or family.

Now, if this be so, then this curious attempt on the part of this respondent to make Christopher Meyer's residence in Piscataqua an authority for *his* preaching in New-Brunswick, is as ridiculous as it is evasive.

The case is not before the Court for any adjudication upon this point; but looking at this canon with a desire to get at its true meaning, I am disposed to concede that such private services as a pastor is required to perform for members of his own flock—such as marrying, baptizing, or visiting the sick—are entirely lawful for a minister to perform outside of his parish limits, and that it would have been lawful for this respondent to have visited the family of Mr. Meyer in Piscataqua, and performed for them any of those private ministrations, and that he could not have been lawfully complained of by any one for so doing. I think the *parochial cure* does extend in that way beyond the territorial boundaries of the parish. But what did the respondent do at Mr. Meyer's? He is not charged in the presentment with any thing done there, with saying family prayer, for instance—although I have never understood that that was peculiarly a ministerial function—rather that of every head of a household. He did not solemnize holy matrimony there. He did not baptize any member of that household. So far as the evidence goes, it does not appear that his visit had an official, or any other than a social character; and if he had performed there any official act which would have been his excuse under this canon, I think he certainly would have proved it. What he really did, not in that parish of Mr. Meyer, but in New-Brunswick, was to preach publicly to as large a congregation as a general and conspicuous advertisement in a newspaper would bring together; and now to claim that because there were in that congregation eleven persons, the members of Mr. Meyer's family, and four or five others who belonged to the respondent's church in New-York, he was entitled, according to the usage of the Church, to go and preach there, is, I think, to claim a little too much.

It is not necessary for us in this case (and, therefore, the testimony which it was supposed bore on that point was properly excluded) to establish any intent on the part of the respondent to

wrong his brethren in the ministry, in order to make out the offense charged in the presentment. There is no intent charged in the presentment, and there has been no effort on the part of the presentors to prove such intent. And yet the absence of any proof upon that subject is urged as a reason why the case is not made out! If the canon was innocently violated, if there had merely been a mistake committed, undoubtedly an honest intent would be a great excuse. But it should not be required of a minister whose rights have been invaded, that he should show, in order to be entitled to the protection of the canon, that his brother in the ministry who wantonly and in disregard of due notice and warning, invades his rights, has some ulterior end in view. We can not tell what men's purposes are except by their acts. All that we could show here was, that this respondent had disregarded the fair and courteous notice given to him, that the service he was advertised to hold in St. James's Methodist Episcopal Church would be considered by the rectors of New-Brunswick as an intrusion upon their rights.

But it is said—and I now approach the last suggestion I have to make in reference to the construction of the canon—it is said that because the act complained of was in the church of another denomination, it is not embraced by the canon; and in order to sustain this point, an idea of *jurisdiction* is taken from municipal law, and imported into the case.

Now, jurisdiction properly means the right to exercise certain prerogatives or functions within certain territorial districts. The jurisdiction of the local courts of the city of New-York is confined to the city of New-York—that is their jurisdiction. But in any community where the civil law does not enforce the regulations of ecclesiastical bodies, it is quite clear that the idea of jurisdiction can not properly be taken into view except in and among the members of the particular body itself. They may create jurisdiction as between themselves, as they have done, as the Protestant Episcopal Church has done ever since its existence in this country. The jurisdiction of a bishop is a territorial jurisdiction. The jurisdiction of the Bishop of New-Jersey is over the whole State of New-Jersey. But it will be said on the other side, "Has he any jurisdiction over the Methodists, the Presbyterians, or the Roman Catholics in that State?" Why, no, none at all, according to the civil law. But as against all other bishops of the Protestant Episcopal Church he has an exclusive jurisdiction over the State of New-Jersey; and it would be just as much a violation of the canonical law of the Church for a bishop from any other diocese, without the consent of the Bishop of New-Jersey, to go within the territorial limits of that State and perform episcopal acts, as it would be of the civil law if the Protestant Episcopal Church

were the creed of the land, and its rights were defined by State or Federal legislation. The law of the Church is binding upon the members of the Church—not, of course, upon those who are not members of it; and the jurisdiction of its bishops is, as between themselves, as exclusive as if the Church were the recognized creed of the civil law. And just so in reference to parish limits. No minister of this Church in New-Brunswick has any right to impose his views, his modes of worship, or his preaching, upon any persons who will not hear him. He has no right to go into a Presbyterian Church, for he has no jurisdiction there, in the sense of legal power. He has no right to go into the Court-House of New-Brunswick and preach, if the public authorities do not permit him. He has no right to go through the territorial limits of his parish and force his preaching upon any, whether they be Methodists, Presbyterians, or what not. But as against his brethren in the same ministry who have agreed to be bound by the same rules and regulations as he, who, with him, have agreed to the parceling out of these territorial jurisdictions between themselves, his rights are exclusive, and they can not be destroyed or disregarded because another denomination has built a place of worship in some one spot in his parish.

The gentleman who closed the argument upon the other side, spoke of the exclusiveness of our Church in arrogating to itself peculiar privileges and rights above other denominations, and he seemed to argue that therefore the respondent was authorized to violate or ignore any canon or regulation which may stand in the way of fellowship with other denominations. I had not intended to say any thing upon that subject, but perhaps I ought not to omit to notice it because it has been made the ground for a good deal of misrepresentation of the motives of those who have in charge this presentment, and who are conducting it, as they believe, strictly according to the laws and regulations of the Church. I contend that there is no body of Christians in the United States more liberal toward other bodies than the Protestant Episcopal Church, even as represented, if you please, by the most extreme "High Church" party within it; I use the term because it has been introduced by my friends upon the other side. The legislation of the Church shows this to be so; and it is the legislation of the Church that is to be resorted to rather than the practice of individuals. There is no minister, or licentiate even, (that is, a person simply licensed to preach,) of any denomination of Christians in this land who can not, if he have the proper moral and religious character, and is free from blame in his own denomination, become a minister of the Protestant Episcopal Church upon six months' probation. That is the law of the Church. If the party to which the respondent belongs wishes to have a majority in

this diocese or in any other part of the Church, why don't they bring in their friends from the other denominations with whom they desire to be in fellowship? There are enough of them, as the counsel has shown—Methodists, Presbyterians, Baptists, and others—to swamp the Episcopal Church if they will only come in. In six months they can come in, and in due time can have seats in the Convention and make such canons as they please. Six months' probation is all that is required for the first orders, and every minister of a congregation, no matter what his original denomination, is entitled to a seat in the Convention and to a voice in making our laws and in the election of our bishops. Is there any thing exclusive about that? But, they say, you do not recognize the validity of orders which are not episcopal in their origin. Well, who has a right to recognize or not recognize such orders? I ask any intelligent man whether any thing that the Church can do, any thing that any individual clergyman may do, can change the fact? It does not depend upon what we say or do whether orders obtained from any other source than the bishops are valid or not in the Church. Suppose we should go to work and legislate through a general convention as broadly as any body could desire, and declare that it is the voice of this Church that all orders, no matter how obtained, are valid orders of ministry, would that help the case? If they were not really so, would our saying so help the case? Can we make or unmake the Church of God according to the voice of the predominant majority of the moment? Men have their different views undoubtedly, but every man is bound to hold to the truth as he finds it, and not to charge exclusiveness upon those who, reading the facts of history, come to certain conclusions about the organization of the Church of God. For others holding a different view to charge these with being uncharitable or exclusive because they follow the truth as it appears to them, seems to be absurd. I ask if there is anywhere in any part of the Church a stronger yearning for unity among all Christians throughout the world than among those thus charged with being exclusive? Their desire is for unity with all who can stand upon the Nicene creed. That is the unity for which the Church longs—unity with the living and with the dead, unity with the Church which first met in the upper chamber at Jerusalem, unity with all branches of that Church throughout the world. That is the feeling which fills the Christian heart and which is embodied in the creed, "I believe in the Holy Catholic Church," not "I believe in the Protestant Episcopal Church"—you don't find that in the creed. The Church holds out the hand of fellowship to all; gives them the most liberal invitation, saying to them, Come if you will, and be ministers at her altars; take to yourselves parishes, and teach the people; vote for our

bishops, legislate in our councils, and be brethren with us in all the offices of this holy ministry. But do not ask us to give up what we believe, perhaps incorrectly, perhaps without sufficient warrant, but still what we believe essential to the Church. If one of our own youth desires to become a minister in the Church in which he has been brought up, in which he has learned his catechism and his creed, been confirmed and lived an exemplary and pious life, the Church requires the full qualifications as to education, classical and otherwise. He passes through his novitiate, and, after he has been a candidate for orders, usually for three years, he is admitted to the first order of deacon. Ordinarily he serves in that order for three years before he is admitted into the order of priests. That is the law of the Church in reference to her own children; and yet, in reference to all who, having been licensed or ordained in other denominations, desire to enter her ministry, all that she requires is that their grounds for leaving the denominations to which they have been attached shall not be such as are unfavorable to their moral and religious character, and that, after a brief novitiate of six months, they shall pass an examination on those peculiarities which distinguish the Protestant Episcopal Church from other bodies. After that short probation, they may be admitted upon a parity with those of her own children who have been brought up under her teachings and who have spent from three to six years in special preparation. I can see nothing exclusive or illiberal in this; but if there is any thing in the attitude of our Church toward other religious bodies which is not believed by those who minister at her altars to be consistent with Christian charity, I certainly think that any change in her attitude ought to be the result of consultation in her councils, and of regular canonical enactments by her authorities. Her position, as settled in her canons, is clear and distinct. Any minister of another body who has had Episcopal ordination, as distinguished from ordination by a Presbytery or from none at all, may be received into our Church after a short probation without reordination. But any minister from another body who has not had Episcopal ordination, though he may be received into the Church upon the same liberal terms, must be reordained, as the Church always requires Episcopal ordination, and does not recognize the validity of any other. Such are the canons. I don't know any party in the Church that is responsible for them. It has been the settled policy of the Church from its beginning in this country. I do not know of any attempt having been made to repeal it; and, if I read aright the position of the gentlemen on the other side, they in other places acquiesce in its propriety. Says Dr. John Cotton Smith, in his answer to the Bishop's Pastoral, (p. 5,) "I hold it (the Episcopal constitution) to be essential to the

well-being of the Church. I have no expectation that there will ever be any real or structural union in the Church of Christ except upon the basis of Apostolic Episcopacy." How is it that this is not exclusive or uncharitable? Dr. Smith continues: "So far from sympathizing with denominationalism and the sect spirit among Christians, I have always contended against them, and striven especially that our Church should not descend from her catholic position to that of a denomination or sect."

I ask nothing better than that. What, then, do these gentlemen mean who agitate for what they do not want, for the sake of creating prejudices against those with whom they differ?

I asked one of the other reverend witnesses a question based upon a statement in this same pamphlet of replies to the Bishop—one of them who was styled one of the Patriarchs in the Church, by the counsel on the other side—but there seemed to be, among these witnesses for the respondent, a tendency to flinch from the facts. I quote from Rev. Dr. Tyng's pamphlet, (p. 19,) who says to the Bishop: "I do not think a general mingling of the ministrations of the different denominations of Christians would be wise or likely to be effectual. I fear, with you, that such efforts will tend to disorder and confusion rather than to peace and harmony." I ask nothing better than that. Why will they not live up to it? Why preach forever and never practise?

[Rev. Dr. TYNG. "I do try to live up to it."]

When he was asked, as a witness, whether that was correct, he reversed the whole order, and thought it would be very useful "to carry our excellent forms of worship" among other denominations, and gain them from "their irregular relations over to the Church." Well, I don't think that Dr. Tiffany understood the efforts of this respondent exactly in that light.

As a matter of Christian courtesy, if a minister of the Protestant Episcopal Church accepts an invitation to preach in a Presbyterian or a Methodist or a Baptist pulpit, and preaches there the peculiar doctrines of his own Church, unless it is distinctly understood beforehand that he is to do so, I am inclined to think that it would be ground of just complaint; a minister of the Episcopal Church officiating for such a congregation is naturally expected to adopt, to some degree at least, their forms of worship.

Now, does the result of this intermingling of services answer the expectation of these gentlemen? When they go in that way to other churches, do they bring over the congregations and the ministers of those churches? Is that the result? I do not think it is. It was said by some one—I believe of the unfortunate Colenso, Bishop of Natal—that he had been sent out a missionary to con-

vert the Zulus, but that, by mistake, the Zulus had converted him. (Laughter.)

By way of further illustration, I may allude to the remark of a political friend, who, when Secretary Seward was going around the country with President Johnson, was asked whether he thought Secretary Seward could, consistently with his former position in the Republican party, accompany President Johnson on that tour, and give him the sanction of his presence? The answer of the gentleman was: "Oh! he is going along to prevent the President from getting into the Democratic party." (Laughter.) I imagine a like result usually follows these attempts to convert other denominations by going into their churches that followed Mr. Seward's efforts to save the President. No! congregations are not converted in that way.

Yet now, when, after the turmoil of our civil war, men were wearied of what was called political preaching, of whatever kind; when all eyes seemed to be turning to the order and harmony of the Episcopal Church, which had survived, unbroken, all these civil struggles—a Church where the Gospel was preached according to the four Evangelists; where the strifes of the world were, to a great extent, kept out of the pulpit, and men found peace and comfort; when there was evidently a longing for her services apparent among many of the religious bodies in our land, and a feeling of kindness and affection toward her—what do we see? We see a large party within her communion taking every occasion to disparage her ministry and to mutilate her services, and making a boast of doing so. In view of this fact, I say that, if there is any determined position that should be taken by the authorities of our Church, it is, that no individual minister shall have the right to commit the Church at large to any particular attitude in reference to the clergy of other denominations, and that, if any change be necessary, it should be the subject of legislation in our general councils, and be there settled. And if the proposition shall be made to enlarge this canon so that a minister of our Church may officiate in the church of a minister of another religious body, without being considered guilty of a violation of the canon, I will propose, for the benefit of our friends on the other side, an amendment which will settle the matter. After the end of this first section I suggest that they move the addition of these words: "Provided, however, that nothing herein contained shall be construed as prohibiting any minister from so officiating in the church edifices of the following denominations of Christians, on the invitation of the minister or trustees of any church thereof, to wit: Congregationalists, Baptists, Presbyterians, Methodists, Moravian, German Reformed, Lutheran, Quaker, Roman Catholic, Unitarian, Universalist, or Swedenborgian."

This collocation I take from a very respectable Presbyterian writer, Baird's *Religion in America.* He classes the different bodies, (and gives a great many more than I have given here.) And if a ministration in the church edifice of another denomination of Christians is to be construed as an exception to the operation of this canon, it is desirable to know what bodies of Christians are to create the exception. Is it to be made at the whim or caprice of any individual minister? May a minister select what he considers "eminently respectable" churches in which to officiate? May he go, without violating this canon, (supposing that otherwise he is withini ts purview,) and officiate in a Unitarian Church? He may say, and say truly, that the Unitarian Church is a very respectable body. It has produced some very eminent Christians. I need hardly mention the saintly Channing of Boston, to say nothing of other eminent men who have belonged to that church. If we are to take the ground that every religious body which produces men of pious life and character may be adjudged by the opinion or caprice of any individual minister in our Church to have regular orders and a valid ministry, where are we? Of all the prominent bodies of Christians in this country, it may be truly said that they have produced men of eminent piety and holiness of life. I suppose that the city of Boston at one time had three as eminent, devout, and holy men, in three churches of very diverse creeds, as could well be found in any one place—Bishop Griswold of the Protestant Episcopal Church, Archbishop Cheverus of the Roman Catholic Church, and Dr. Channing of the Unitarians. Is the truth of the Gospel to depend upon the personal holiness or virtue of individual men? Undoubtedly there will come a time, but it is yet far distant, when we shall see truth and goodness together as One; but in this lower world we find many men holding the truth intellectually who are destitute of Christian piety, and a great many others having many Christian virtues who hold very defective and erroneous beliefs. No church, however, that does not believe in itself can do much toward evangelizing the world. No body of men who are indifferent to the very essentials of the Church to which they belong can ever impress those essentials upon the minds of others. Therefore it is necessary that every body of Christians should have a firm faith in its own standards, should believe in its own dogmas, and should have confidence in its own orders. Its own ministers should stand by their flag, whatever it may be, and only as they do so will they produce any effect upon the world. Otherwise Christianity is only natural religion; it degenerates into Deism or deliquesces into mere literature. If a man has no positive dogma, no belief in any of the truths of the Gospel, no loyalty and love to his Church, he can do little to advance its cause.

I have departed from the line of my argument to vindicate the Church from this opprobrium of exclusiveness. To hold fast to the truth as a man believes it is entirely consistent with the most large-hearted Christian charity; and if these gentlemen who seem to be desirous (because their efforts seem to tend that way) of creating divisions in the Protestant Episcopal Church, and casting opprobrium upon those with whom they do not agree, do it in the hope of currying favor with other bodies around them, I think they are woefully mistaken. The counsel upon the other side took occasion to allude to that affair at Philadelphia. What a sight that was! A bishop of the Protestant Episcopal Church going into that conclave to receive their certificate of his orthodoxy, they in effect saying to him, "We do really believe now that you have some truth in your Church;" one of them going so far as to say that he had no sort of doubt that if the sermons of the Bishop of Ohio were all collected together, the Gospel would be found to be preached in all of them! No! gentlemen will gain nothing by efforts of this kind. There are those in the other denominations who look on with anxiety at these disputes and strifes in the Episcopal Church. There are others, more partisan in their feelings, who look on with hope, thinking that they see our Church brought to its fall; but let me say that none of these other denominations will receive to their bosoms those whose parricidal hands are seeking to accomplish that fall.

I go back now to the construction of this canon, and to conclude all I have to say in reference to its immediate provisions.

The point was taken upon the other side that no single act, even though it might appear to be a violation of the letter of this canon, could be considered a violation of its spirit, because the object and purpose of the canon was to prevent building up rival congregations. Well, you can not have rivalry of that kind built up without a beginning. How long does it take to build up a rival congregation by these intrusive services? Are you to wait until the end is attained, until the rival congregation is built up, before you can charge a violation of the canon? If an effort of that kind is to be stopped, it must be in the beginning. I come, therefore, to this conclusion, that if this act of the respondent in this case was *not* a violation of this canon, it can not be violated by any act short of a breach of the peace, by going into another man's church and turning him out of his pulpit. That was the construction of Rev. Dr. Tyng—that a man's parish consisted of his pulpit merely, and of the dwelling-houses of his congregation, and that anywhere else he had no right under the canons of the Church. There is no danger of getting any very large congregation in a private house, and therefore, it is impossible, under Dr. Tyng's construction of the canon, that it should be violated ex-

cept by going into another minister's church and disturbing the worship there. As I have said before, we did not need a canon to prevent that; the law of the land prevents it.

In giving my construction of the canon, I cut loose the basis of the argument which was rested on usage. No witness pretended to testify here that it was the usage of ministers of our Church to preach within the territorial limits of other men's parishes against their express prohibition. I think that all of those who did testify here to usage were gentlemen who had previously signed this Declaration, agreeing to stand by the respondent in this case, and they testified accordingly. I think I may fairly say that they did not testify candidly on this subject of usage, with the exception, perhaps, of Dr. Muhlenberg—that saint who might break all the canons of the Church, and, as in the case of the oath sworn by Uncle Toby, "the recording angel would drop a tear upon the page and blot it out forever." (Applause.) Dr. Muhlenberg testified candidly, but only as to his individual practice, and there is nothing in his testimony which hurts the case of the presentors.

In reference to this matter of preaching, it may be that there is room in the Church for a different class of ministers from any we now have—an order sometimes called Evangelists. That question has been presented on several different occasions at the General Convention, and the House of Bishops has been, I believe, very strongly against a change. There was a petition in 1865, I think, by prominent men of all schools of opinion in the Church, for the establishment of such an order. In the Roman Church they have something of that kind. The great trouble, in a community like ours, restive under all restraints, is the regulation of a body of men whose gifts are peculiarly in the line of preaching. They are apt to be carried away by their zeal or by other influences, and sometimes to become fanatical, and they are always, from the nature of their peculiar gifts, impatient of control. I suppose there never was a more eloquent preacher in the Scotch Church than Edward Irving, upon whose eloquence crowds in London so often hung in rapt attention; but we all know his fate. Fashion deserted him. He degenerated into a mere fanatic; then came the speaking in unknown tongues; and he died broken-hearted, perhaps a lunatic. There is something in popular incense that is terribly inebriating. At all events, whatever the reason may be, the Church has hitherto declined to depart from the regular order of her ministry—diocesan bishops, parochial ministers, and missionaries connected with some particular society or organization and having definite fields of labor. The *Paulists* in the Roman Catholic Church in this city, who are chiefly, I believe, persons who were originally in the Presbyterian and other

denominations, have been very successful in this matter of evangelizing. But they are under strict regulations. "The missionaries" (I read from the *Life of Futher Baker*) "are invited by the pastor of the parish with the sanction of the bishop of the diocese from whom they receive jurisdiction." They hold meetings which are in the nature of revivals. They reach by enthusiasm and excitement a large class of persons who are ordinarily indifferent to all the claims of the Gospel. They begin in the early morning, and continue the services during the day. When the men have gone to their daily duties, the missionaries devote themselves to catechising and instructing the children and to hearing confessions, and in the evening there is generally a passionate exhortation from some of their most celebrated preachers. They do their work while they are about it. They do not preach a sermon and then take the next train.

But all changes that may be desirable in our organization, all efforts to increase the efficiency of the Church, judicious in plan and promising to be effectual, would, I have no doubt, receive from all parties in the Church cordial support. Is not this the best way to go to work? If there is any thing defective in our organization, is it not better to make the required changes under the law and through the law, rather than by breaking the law?

It has been charged that this particular canon has a party bearing. I am surprised at that charge. I can not see how it is so. The canon was enacted in the Church long before the parties that now exist in it had any existence. It comes down from the early past; and its general tendency being to protect the independence and rights of every minister in the Church, no matter to what school or shade of opinion he belongs, I do not see how it can be said to be a canon made in the interests of any party. If it seems to wear a party look now, it is only because a certain party insists upon violating it. Suppose during my summer vacation I should be with my family members of a decidedly Low Church parish; I should consider myself an unworthy Churchman, if, while occupying that position, I should, under color of inviting any clergyman from New-York or elsewhere, whom I chose to entertain hospitably, set on foot other services, or in any way sow distrust between that minister and his parishioners. I do not see why all persons and parties in the Church can not live by this law. It is a good law. It exacts of no one any thing more than Christian charity and ordinary courtesy would exact. I have shown that it is a mistake to suppose that it limits or restrains in any way the liberty of preaching. I think I have shown that to violate it in order to carry out some other end—the affiliation, for instance, with other religious bodies—is not only a perversion of the ministerial office and an interference with the rights of ministers of the Church, but is

putting the Church itself in a false attitude. We have, perhaps, in this community, a larger number of religious bodies than there are in almost any other country in the world. All the *disjecta membra* of the Church, which came from the struggles of the Reformation, have found a home here. We are here from England, from Ireland, from Scotland, from Germany, from nearly every part of the civilized world. Here we all stand upon the same footing before the law. Under the law of the land our Church has no rights superior to those of any other religious body. All these bodies have their own organizations and their own views of the best means of advancing the Gospel and the interests of their own bodies. Can not we live in peace, each following its own way in the confidence that it is the best way; and not make our whole struggle for the cause of the great Head of the Church a constant internecine warfare among ourselves? I picture the ark of God floating upon the waves of this troubled world, and those who are within it striving to save from the weltering sea about them the souls of many who ought to be within that ark. I see its banner high aloft—the crucified Saviour. What more do I see? I see men on board, whose work is the salvation of souls, quarreling with each other at the expense of a ruined world. What more do I see? I thought I saw as in a dream—God grant it may not be true—but I thought I saw some within that ark who were trying to scuttle it!

The learned counsel upon the other side, who closed the argument, made what I thought was a threat. He seemed to dare this Court to administer the discipline of the Church: he seemed to prophesy—I don't know whether he meant it as a threat or not—that this respondent would not submit to discipline. Perhaps I do him injustice, but I understood him to prophesy great calamities to the Church if the respondent should be convicted; and the victory was declared in advance to be a defeat, if a victory should be obtained.

Now, an example has been given of ecclesiastical discipline in this country which I think ought to be held as a precedent by all concerned. I do not mean to rake among dying embers; but there was a case of discipline in this diocese which has not yet passed from the recollection of those present, and to which it may not be improper for me to refer. For sixteen long years, a man who had worn the highest honors of the Church in this country, went about these streets on his daily way to the house of prayer, stripped of all his dignities. There were friends who told him that his sentence was illegal, that the canons had been violated, and that all he had to do was to insist upon his legal rights; but he did not follow their advice. His liberty of preaching was restrained; his right of ordaining ministers, of laying on hands in confirmation was suspended; and he who had pre-

sided in the councils of this diocese, went to his grave a private Christian, after sixteen years of obedience to the discipline of the Church, without murmur or complaint. It would not become me to say that that discipline was owing entirely to any partisan feeling in the Church. There were those who thought so—perhaps carried away by the excitement of the times—but it is well known that the management of the case, its initiation, and its conduct from the beginning to the close, were in the hands of those who are represented, to a great extent, in the party which now objects to all ecclesiastical discipline. Just before receiving his sentence, that defendant prayed that it might not alienate from the episcopal body "the confidence of the Church, and plunge her into irretrievable distraction." I think the prayer was heard. Whatever of party spirit entered into the prosecution spent its force there. Its victory, to use the language of my friend, was its defeat. It came up a great, swelling wave, threatening to submerge the Church itself, but it broke into drift and foam along the shore, and the Church stood as a rock, stronger than ever in the affections of her devoted children, and so stands to-day. The Church can inflict discipline and not be ruined, if she does it in the fear of God, and for, as her sole end, the good of her clergy and people.

Now, there is nothing in this case (God be thanked!) which affects the character or usefulness of this respondent, or which will prevent his being an honor to his Church. Greater men than he have submitted to discipline and have left names which are sweet in the recollections of the Church. What may be the effect in this case I can not know, nor do I anticipate the result of the trial. I do not labor here for victory. I do not ask for any finding of this respondent guilty unless the Court are clear in the conviction, that, by the true construction of this canon, the act which he performed, against protest, was a violation of the canon. If so, I take it for granted that they will do their duty according to their consciences, and leave the rest to God. That is the way of acting which is brought home to every one of us in his daily life. We have to find out what is right and do it; leaving the consequences to take care of themselves.

As to the religious bodies around us, I think one thing at least is sure, that nothing is to be gained in respect to them by departing from our own Church principles or our own Church laws. In this connection I do not think it out of place to allude to the resolution put forth by the council of bishops at Lambeth, including one of the bishops of the party to which this respondent belongs: "We, bishops of Christ's Holy Catholic Church, in visible communion with the United Church of England and Ireland, professing the faith delivered to us in Holy Scripture, maintained by the primitive Church, and by the Fathers of the English Reformation, ... do here solemnly

record our conviction that unity will be most effectually promoted by maintaining the faith in its purity and integrity—as taught in the Holy Scriptures, held by the primitive Church, summed up in the creeds, and affirmed by the undisputed General Councils—and by drawing each of us closer to our common Lord, by giving ourselves to much prayer and intercession, by the cultivation of a spirit of charity, and a love of the Lord's appearing."

That is so theologically, according to the doctrines of the Gospel. That is so even mathematically—draw near to the centre and all will become one. But let bodies at the circumference, instead of trying to draw near to the centre, give way to distractions and quarrels among themselves, and the result will be that they will fly off in tangents or run in all sorts of eccentric courses. We may never see the Christian world united again in one body, but it is the hope of every Christian heart and the prayer of our Church in many of her offices. We shall find the perfect shape of truth only at "her Master's second coming," (to use the fine language of Milton;) "He shall bring together every joint and member, and shall mould them into an immortal feature of loveliness and perfection."

I think I ought not to omit to notice, before I close, the allusion (not quite in keeping, I think, with the general dignity of this case) which has been made to a book of prayer said to be published under the auspices of the rector of Trinity Church. The counsel upon the other side read a prayer from that book in memory of the dead. I do not think there is any one who has had a near friend gone before him who can hesitate long about using that prayer, whatever his creed is. Any man who can use the prayer for the Church militant in our Communion Office, where we bless God's holy name for all his servants departed this life in his faith and fear, and beseech him to give us grace so to follow their good examples, that with them we may be partakers of his heavenly kingdom, can, I think, use the prayer the counsel has read.

There is another prayer that I must read in this connection from the *Burial of the Dead*—a prayer that has come to us from the Reformation:

"Almighty God, with whom do live the spirits of those who depart hence in the Lord, and with whom the souls of the faithful, after they are delivered from the burden of the flesh, are in joy and felicity, we give thee hearty thanks for the good examples of all those, thy servants, who, having finished their course in faith, do now rest from their labors. And we beseech thee that we, with all those who are departed in the true faith of thy holy name, may have our perfect consummation and bliss, both in body and soul, in thy eternal and everlasting glory, through Jesus Christ our Lord. Amen."

Mr. FULLERTON. If you want to compare the two prayers, Mr Nash, here is the one that I read.

Mr. NASH. I listened to it when you read it. So much for these prayers.

Now, I think it is about time that our clergy who are so strenuous about the liberty of preaching should also have some regard to the *quality* of the preaching. The future that awaits the Christian Church is full of doubt, is full of peril. It is not simply any one form of the Christian faith, any one denomination of Christians, any one body calling itself a Church—it is not simply Protestantism, it is not simply Romanism—it is Christianity itself that is at stake. And I say again, it is time that the clergy of our Church girded up their loins, polished their armor, and prepared themselves for the battle that is coming. Are they prepared to combat the skepticism of the day, the "scientific" infidelity which, under the name of Positivism, knows nothing, recognizes nothing, outside of the domain of science? Are they prepared to combat that materialism which believes in nothing spiritual, which ranks the Church no higher than a club, and the sacraments as no more than remembrances; which denies the miracles of the Gospel and the divinity of our Lord? Are they prepared to stand by the Scriptures and to sustain their claims as the true records of the life of our Saviour upon earth, and of the writings and teachings of his Apostles? Why are men at strife with each other because some think they can do this same work that all are pledged to do in a way which they deem more effectual than another? All have full liberty to work in their own way. But because there are some who think that the Church which her Lord founded upon earth possesses something of the mysteriousness of his own body, as he himself called it, that there is healing and virtue in its very garments, and therefore love it and think of it with reverence and awe, they are nicknamed as Sacerdotalists, and it is charged that they do not preach the Gospel! Is there to be no room in the Protestant Episcopal Church for such men as George Herbert, or as Bishop Ken, whose Evening Hymn rolls round the world? Do the signers of the Declaration mean to break this Church into pieces, or drive off all those who will not stand upon the narrow platform of their pale and shadowy theology? We do not mean to be driven off. They claim their rights in this Church and we claim ours. When I say "we," I do not speak—I have no right to speak—for any one connected with this case. I speak of the school of opinion in the Church—the party in the Church if you choose—with whom I sympathize, and I say that we do not mean to be driven off. We claim that there shall be a Church where the creed of Nice can be held without submitting to the domination of the Pope. We claim

that in this Church we have a right to hold the faith of the Apostles and of the early fathers prior to the division of the Church, and that we can not be driven out because we hold that faith. But we are ready to join hands with all, to spread the truth of the Gospel and to defend its claims against error of all kinds; and, above all, to carry forward the banner of the Church against the impiety, the wickedness, the indifference, the perplexity, the scientific falsehood of the day against all enemies of the Church's faith throughout this land. (Applause.)

At the conclusion of Mr. Nash's argument, Rev. Dr. TYNG said: I wish to say a word to the reverend Court in reference to a notice that I have given, desiring that I may not be deemed as having done any thing disrespectful to the Court. When by the ruling of the Court it was decided that but two counsel should be heard in the defense, as there were but two counsel employed in the prosecution, there being a large body of friends who could not find access to this room, and who desired to hear something in reference to the subject, I gave notice that I should read the argument I had prepared for the defense, to-morrow evening, in St. George's Church, at half-past seven o'clock, to my own friends gathered there. I mention it that I may most respectfully say that I do not intend any disrespect to the Court, but merely the gratification of personal friends.

The CHAIRMAN. The further duty of this Court is marked out by section 9 of canon 17 of the Diocese of New-York, of which I will read such portion as concerns the matter. "The Board, having deliberately considered the evidence, shall declare in a writing, signed by them or a majority of them, their decision on the charges contained in the presentment; distinctly stating whether the accused is guilty or not guilty of such charges respectively; also stating the sentence which, in their opinion, should be pronounced. And a copy of such decision shall be duly communicated to the accused, and the original decision, together with the evidence, shall be delivered to the bishop." This the Court will do. The Court will now adjourn.

ARGUMENT OF REV. DR. TYNG,

EXCLUDED FROM ORAL DELIVERY BY THE DECISION OF THE COURT THAT BUT TWO COUNSEL SHOULD BE HEARD ON EACH SIDE.

GENTLEMEN OF THIS REVEREND COURT:

I shall not affect to conceal the sense of injustice and dishonor with which I approach the practical issue presented in this case.

When I contemplate the purpose here involved, in the prosecution and intended punishment of a youthful minister of Christ, of character hitherto unimpeached, for doing that very thing, for which he was expressly called and appointed as the work of his life; and the perversion of the preaching of the Gospel to a crime, because it is alleged to have been defective, not in the reality and purity of its message, but in a trifling element of assumed formal requisition, I confess I have a sense of the extreme injustice of this whole proceeding, which it is impossible for me to dismiss or deny.

When I survey the arrayed personal antagonism, on the one side, of gathered Church authority, of combined official importance, of formal and assumed solemnity, of laborious and protracted detail, of might, of intelligence, and majesty of office, united in this purpose of punishment; and on the other a youth, solitary, persecuted, unprotected by human power, undefended except by the fidelity of his personal friends, I have an impression of the naked absurdity of this whole proceeding, which annihilates all respect for its dignity, and compels me to style it as in itself, supremely ridiculous; and I marvel at the apparent gravity of aspect with which its successive scenes have been performed.

But when I seriously estimate the solemnity, of the far-reaching issue in this purpose to be accomplished, the painful narrowness of mind displayed in the persecution attempted, the shocking and impossible principle which is here to be forced upon the Christian Church, in the claims of power, and the false assumptions of law, which lie at the foundation of this charge, and which will be considered as established, by the conviction and punishment of the respondent accused in this case, I can not but feel that few questions have ever arisen in the Christian Church of more importance, or likely to be attended with more serious results. This whole prosecution is in reality a prohibition, of the ministry of the Gospel "in season, out of season," as God the Saviour has commanded and required it, and an actual persecution of Christ in the person of one of

his ministers, for this cause, the guilt of which can not be denied nor its danger concealed.

There is here a vast and imperishable interest connected with this case. This reverend Court bears a tremendous responsibility before the whole Christian world, and they will be judged accordingly. They have before them the first attempt, made to carry this element of complaint against the preaching of the Gospel, successfully into a trial, which has ever occurred in the history of our Church in this country. The accomplishment of the purpose of these complainants will do more—permit me to say, has probably already done more before it has been entirely accomplished—to degrade and dishonor the character of the Church in which they are ministers, and to limit and retard its growth, its influence, and its welfare, than all that they have ever done, or are likely to do, in any way to promote and advance it.

And when I contemplate the animus, the manifest motive of this causeless persecution, I am equally shocked and startled at the spirit which it reveals. This prohibition of the preaching of the Gospel, in the city in which these complainants are appointed to minister, without their consent, assumed by these gentlemen as their right, when not a particle of mischief, or inconvenience, or disadvantage to them, is pretended by them to have been suffered in consequence of it, makes it so clearly a mere persecution from personal hostility, an accusation from envy and spite, that not a mind in this community is to be deceived, by the flimsy pretense of a reverence for order, or a care for the honor of the Church, with which they may seek to cover it. And I here demand of this reverend Court, by what just right these two gentlemen come here to stir up all these past and settled animosities, to interrupt and destroy the peace of this Church, drag witnesses here at vast inconvenience and expense, require all this waste of time, and health, and comfort, and impose upon the members of the Church in this diocese, an expenditure probably not less than twenty thousand dollars, when the worth of time as well as the cost of actual services is taken into account. I demand, what right have these two complainants from New-Jersey to come here and at all this cost, and burden, and weariness to others, to throw this firebrand into the Church, and the churches of New-York? Is a miserable point of their offended pride, or violated self-adulation, a sufficient reason? Is the whole city and diocese of New-York to be disturbed, to keep two unpopular ministers secure in New-Brunswick? Is the whole authority of the Church to be invoked to guard them from the active weariness of those who would gladly get rid of them? What other fear or motive can be imagined as the basis of their demand?

So far as the respondent is concerned, did he court the notoriety

with the desire for which he has been charged in this relation, there surely was no method of bestowing it so certain, as the one which these gentlemen have chosen to adopt. He may well "glory" in this position and privilege, as one of his reverend prosecutors has said, at the opening of this case. To him "it has been given," by his Divine Master, "not only to believe on his name, but also to suffer for his sake." And the result of the whole prosecution and trial which he has been here called to endure, will be, beyond all question, in the analogy of the whole providence of God, to advance the honor, and to enlarge the influence, which God gives to such righteous suffering; and to heap an abiding dishonor and disgrace upon those who have instituted and pursued it.

I stand before this reverend Court, as his counsel, to maintain that he has violated no law, and is justly amenable before you for no transgression. He is charged with nothing which transcends the limits of his unqualified right; and by no just decision of this Court, can he be made to bear the penalty of transgression.

To demonstrate this position, I propose to examine the provisions and demands of the canons, under the professed authority of which, he has been arraigned before this Court, and for alleged violations of which he has been summoned here to answer.

But before I enter upon this direct line of argument, I shall take the liberty, with due respect for this reverend Court, but with entire frankness, to make some preliminary observations practically bearing upon the whole case, and illustrated in the progress of the trial through which it has passed.

I shall *first* remark upon the constitution of this reverend Court, before whom the respondent has been called to appear, personally considered.

By the provision of the 17th canon of the Diocese of New-York, in arranging a court for the trial of a clergyman, the ecclesiastical authority must select *twelve presbyters*, from whom the accused is permitted to choose *five*, which five shall constitute the Court for the trial which is to be arranged for the clergyman accused. If the clergyman accused fails within thirty days to make such selection, the ecclesiastical authority may appoint five, who shall constitute the court.

The list of twelve names,* selected for this purpose, according to

* NEW-YORK, October 10, 1867.

TO THE REVEREND STEPHEN H. TYNG, JR.:

REVEREND AND DEAR SIR: The ecclesiastical authority of the Diocese of New-York has made it my duty to inform you that the Committee appointed to examine the matter of a complaint, made by the Right Reverend the Bishop of New-Jersey to said authority respecting you, has reported a presentment, of

the canon, was presented to the respondent in this case, by the ecclesiastical authorities, when the presentment was allowed. But one name out of the twelve, was of a clergyman, in any reasonable degree, known to be in sympathy with him. In making a personal selection for himself, he could find in this list but one probably candid judge among the twelve. The personal selection of five involved him in a personal responsibility for the decisions and conduct of the Court, as the objects of his own selection. He wisely determined to assume no such responsibility.* And five Presbyters were selected by the ecclesiastical authority† to compose the Court, and to conduct and finish the trial for which they were appointed.

which the inclosed is a copy; that such presentment has been allowed by said authority; that the following are the names of twelve Presbyters, of whom, in compliance with canon 17 of the Diocese of New-York, five are to be selected by you within thirty days after the service of this notice, as a board for the trial of the case; that their names are to be notified by you in writing to the Ecclesiastical authority; and that, on failure of such notification, another mode of selection is provided by the canon aforesaid. The names are these: the Rev. Alfred B. Beach, D.D.; the Rev. William Payne, D.D.; the Rev. Sullivan H. Weston, D.D.; the Rev. Isaac H. Tuttle, D.D.; the Rev. D. V. M. Johnson, D.D.; the Rev. Alexander H. Vinton, D.D.; the Rev. Eugene A. Hoffman, D.D.; the Rev George B. Draper; the Rev. Theodore S. Rumney; the Rev. T. Stafford Drowne; the Rev. Samuel Hollingsworth; the Rev. William H. Moore.

I remain, yours very truly,
WILLIAM E. EIGENBRODT.

* RECTORY OF THE CHURCH OF THE HOLY TRINITY,
NEW-YORK, November 9, 1867.

RT. REV. HORATIO POTTER, D.D., LL.D., D.C.L.:

RT. REV. AND DEAR SIR: I received on the 11th day of October, from the Rev. Dr. Eigenbrodt, Secretary of the Standing Committee, acting as the ecclesiastical authority of the Diocese in the absence of the Bishop, a certified copy of a presentment found and allowed against me by the Ordinary, together with a letter containing the names of twelve Presbyters, from whom, in accordance with canon 17, I was requested to select five who should act as a board for the trial of the case.

I beg to say that I do not avail myself of the opportunity afforded me therein to make a selection.

Respectfully, etc.,
STEPHEN H. TYNG, JR.

† NEW-YORK, 38 EAST 22D STREET, Dec. 3, 1867.

TO THE REV. STEPHEN H. TYNG, JR.:

REVEREND AND DEAR SIR: It becomes my duty to carry forward certain proceedings growing out of a complaint preferred against you from the Diocese of New-Jersey. During my recent absence in Europe the Standing Committee of the Diocese, acting for the time as the ecclesiastical authority, had appointed a Committee under the canon to make inquiry respecting the charges brought against you, which Committee unanimously reported a presentment of you for the offenses charged.

The Standing Committee caused a copy of the presentment to be served on you,

It is an indisputable principle of justice, that a court for the trial of human offenses, shall be an impartial one. The poorest man in the land has the right to challenge the individual members of a jury, proposed to try the most unimportant personal offense of which he is accused. Previously declared opinions upon the issue to be tried, are justly esteemed a disqualification for a fair and impartial trial.

It must be said, and it is my duty to say it, with the utmost personal respect in other relations, for the individual members of this Court, before whom the respondent has been called to answer to the charge against him, that their individual opinions upon the issue here to be tried, were thoroughly understood and known before this trial commenced; and the whole process of the trial has made those opinions, and I should be glad if I did not feel compelled to say, and the purposes also, growing out of them, more and more manifest every day. Beyond this I must still take the liberty to say further, that their system of ruling in regard to evidence, their assumed bearing to the counsel for the respondent, have made it so manifest that the whole case was prejudged, and intentionally prejudged, before the trial commenced, that even the papers of the day have rebuked the unconcealed partiality of the Court. And it would seem that no amount of evidence or argument would be allowed to have any weight whatever in removing a purpose for which their appointment appeared to have been designed.

Professed justice in this case has borne her naked sword, but has cast her balances, and her bandage aside. She has well discerned, and others also have discerned, from the beginning, whom she intended to strike, and no secret has been made of the purpose so cherished and determined.

And while I speak it with great pain, I speak it with unhesitating decision, and delare my judgment, that a fair and equitable investigation of the charge made, and of the proofs demanded, has not been

and also nominated twelve Presbyters to you, out of which you were to select five to constitute a Court for the trial of the presentment. This selection you informed me that you declined to make. It therefore necessarily becomes my duty to select, out of the twelve Presbyters, five who shall constitute the court. I have selected the following: the Rev. Alfred B. Beach, D.D.; the Rev. Isaac H. Tuttle, D.D.; the Rev. Eugene A. Hoffman, D.D.; the Rev. Samuel Hollingsworth, and the Rev. William H. Moore.

And I appoint the first meeting of the said Court for the trial of the said presentment to be on Friday, the tenth day of January next, at the hour of twelve, noon, and in the Sunday-school room of St. Peter's Church, New-York, at which time and place you are requested to appear.

Your Brother in Christ,
HORATIO POTTER,
Bishop of New-York.

allowed either by the Court, or the prosecution in this case. If the whole assembly had been arrayed as the mere instrument of a foregone conclusion, and of the execution of a sentence already determined, that conclusion could not have been more steadily and tenaciously pursued, or more surely reached. Against the injustice of this whole proceeding, I enter my solemn protest.

I shall *further* take the liberty to remark, that the importance of a right and satisfactory examination, of the principles involved in the trial now completed, is great, not only in proportion to the magnitude of the issues involved, in reference to the fact that this is the first trial of the interpretation of these principles, in the whole history of our Church; but also in reference to the fact, that in ecclesiastical proceedings, according to our canons, there is no appeal to a superior earthly tribunal, save to the person of the Bishop.

The court of Presbyters appointed for such a trial, is a jury to try the fact, a court to interpret the law, and a tribunal to assign the sentence and the penalty to be imposed.

The value of the decisions of such a court in reference to the facts involved, must be dependent upon their undeniable candor and impartiality; in regard to the principles of law to be adjudicated, must rest upon their acknowledged personal acquirements, of skill and information in reference to the laws which have governed, and should govern the discipline of the Church; and, in connection with the decision to be pronounced, and the sentence declared, must be judged by the spirit of candor and courtesy, which they have displayed toward the accused, in the process of the investigation.

I should be glad indeed to be able to feel, and to be at liberty to say, in reference to the personal constituents of this Court, appointed by the ecclesiastical authority, that I think the Church may have the right to rest upon their adjudication of the principle of law involved in this trial, as so calmly and intelligently considered, so wisely examined, so temperately and patiently investigated, that its decision will preclude all controversy, and stand as a well-adjudged precedent for time to come.

I fear that we are far from having attained this desirable result from the trial now completed. I believe it impossible that its record, spread in print before the intelligent community of this land—as it will soon be, in a perfectly accurate report—will tend to command the full confidence of the intelligent, the honorable, and the discriminating, in the result of its accomplishment, as an embodiment of the most mature intelligence, and the most impartial uprightness, in the Church whose authority it represents.

And I take the liberty to represent to this reverend Court, that there is a tribunal of public opinion in this land, before which an

appeal will always be taken, and will always stand, from every trial and every decision, affecting the rights, the character, and the property of man; and to that tribunal, in every step of our imagination and anticipation, we are constantly impelled, involuntarily, to appeal.

In looking forward to that tribunal, I should be most uncandid and untrue, did I not appeal, with the deepest conviction of the injustice with which the respondent has been treated, of the rejection of all the common principles of law, with which his testimony has been refused, and of the utter disregard of canonical requirement with which the consummation of the trial has been reached; so that its result has no other value in establishing a precedent of authority, but that which may appertain to the amount of intelligence and impartiality, actually displayed by the five gentlemen individually composing this Court, whose decision is to be quoted as a precedent, establishing the meaning of the ecclesiastical law in question.

My right as a citizen, my duty as a counsel, and my office as a presbyter of the Protestant Episcopal Church, would not be consistent with my saying less to this reverend Court than I have now said. Should I speak according to the general expressions of sentiment which I have heard, I should say far more.

With these observations preliminary to my discussion of the history of the case now completed, I shall proceed to examine the canons under which this trial has been undertaken and conducted to its issue.

My learned legal associates have fully and most ably and eloquently presented the law in the case, both in its historical interpretation, and in its actual relations to the great principles of the common law, in which they are so completely versed. But there are many practical moral aspects and influences of this case, which no external professional view, however enlarged or acute, would be likely to take, and which in a personal experience in the ministry under these canons, a presbyter of the Church must have a peculiar opportunity to understand. There are also many collateral and internal issues connected with this, and influenced and influencing in turn, in the process of its consideration, an intelligence and experience of which are essential to a due estimate of the importance of this case, and to a thorough comprehension of the motives which have governed the whole management of it.

All these practical relations and influences come within my province as a counsel for the respondent, and must give me a wider scope for the substance and the connections of the argument, which I shall have the honor to submit to this reverend Court, and which, with whatever little hope of modifying in any way their prescribed decision, will place the subject of it before the community and the

Church, with at least some additional light, and enlarged opportunity of a final correct determination.

The offense with which the respondent is charged, is said to have occurred in the Diocese of New-Jersey. Such is the description in the presentment laid before this Court for trial. "The undersigned, a committee appointed by the Standing Committee of the Diocese of New-York, as the ecclesiastical authority of said Diocese, to examine the case of Rev. Stephen H. Tyng, Jr., a presbyter canonically resident in said diocese, *upon a certain notice given to the said Standing Committee, by the Right Rev. the Bishop of New-Jersey.*"

The actual canonical "*Notice*," as it is technically termed, by the Bishop of New-Jersey, is as follows:

To the Ecclesiastical Authorities of the Diocese of New-York:

In obedience to section 1, canon 3, title 2, of the Digest, I hereby give notice that Rev. S. H. Tyng, Jr., belonging to the Diocese of New-York, has conducted himself in the Diocese of New-Jersey in such a way as is contrary to the rules of the Protestant Episcopal Church.

With this information I exhibit this letter appended, marked A and B, as containing reasonable grounds for presuming its correctness.

W. H. Odenheimer,
Bishop of New-Jersey.

Burlington, N. J., July 16, 1867.

The information and complaint accompanying this notice, and upon which it is founded, is as follows:

New-Brunswick, July 16, 1867.

To the Right Rev. W. H. Odenheimer, Bishop of New-Jersey:

Right Reverend and Dear Bishop: We think it our duty to inform you of a violation of the laws of the Church, which occurred in this city on Sunday last, the fourth Sunday after Trinity.

Rev. Stephen H. Tyng, Jr., of the Diocese of New-York, officiated both morning and evening in the Methodist house of worship known as St. James's church, without permission and against remonstrance, intruding within our parochial cure, and in celebrating divine service not as the Church prescribes, thereby violating canon 12 and canon 22, title 1, of the Digest, subjecting himself to the penalty for misdemeanor under canon 3, title 1.

We fear that if this offense be not reproved, it may be repeated to the great injury of the Church in this place, and therefore we lay

the matter before you that you may take such order in the case as in your judgment may best protect the interests of the Church.

ALFRED STUBBS,
Rector of Christ Church.
EDWARD B. BOGGS,
Rector of the Church of St. John, the Evangelist.
S. V. HOFFMAN,
Senior Warden of Christ Church.

The canon under which this ecclesiastical notice has been given, is canon 3, section 1, title 2. It is entitled, "Of a clergyman in one diocese, or missionary district, *chargeable with misdemeanor in another.*"

Under this canon, and with this distinct and definite presentment, the respondent has been summoned to appear and answer before this Court.

It is indispensable, therefore, to examine the provisions and legal operation of this canon in its general application, before we proceed to consider its particular operation and force in connection with the present attempt to enforce and employ it.

The language of this canon is very precise and positive in its system of definition and provision.

"If a clergyman of this Church, belonging to any diocese or missionary district, shall, in any other diocese or missionary district, conduct himself in such a way as is contrary to the rules of this Church and disgraceful to his office, the ecclesiastical authority thereof shall give notice of the same to the ecclesiastical authority where he is canonically resident, exhibiting, with the information given, reasonable ground for presuming its correctness."

This notice the Bishop of New-Jersey declares himself to have given in due form to the ecclesiastical authority of the Diocese of New-York; and the reception of this notice from the Bishop of New-Jersey, the presentment declares, is the acknowledged legal authority and requisition for this action which has arisen out of it.

The truth of both of these affirmations we shall presently see.

My learned associate, Mr. Tracy, has exhibited fully to this Court the grounds of law upon which this whole transaction fails, according to the language and provisions of this canon.

I shall not attempt to travel over the ground which he has fully occupied—and with vastly more ability and learning than I could bring to bear upon it.

But this whole case rests upon this canon, and its justice is only to be maintained according to it, and in a full conformity to its provisions.

My learned associate moved for a dismissal of the charge upon this basis of an entire failure to meet the provisions of this canon by the presentment, by the preceding actions, or by any of the testimony produced in its support.

The Court refused to grant this motion of dismissal. They must defend themselves in the justice of this refusal. It would be impossible for me to do it. And I must solemnly press the justice, and the indispensable necessity of the conformity of the Court and the trial to the provisions of this canon, notwithstanding this refusal. I shall maintain, without the fear of legal dispute, that the refusal to obey the provisions of this canon, has vitiated the whole proceedings which have followed, or may follow it.

The only right which any bishop has to touch the action of a clergyman belonging to another diocese, is that which is given by this canon. Every clergyman of the Protestant Episcopal Church, is amenable to ecclesiastical judgment or censure, only in his own diocese and to the authority thereof.

And the canon to which I now refer, is the one law of the Church which gives an interdiocesan authority, and an interdiocesan relief.

To this law the bishop is as subject as the presbyter. And to conform to it literally and thoroughly, he is just so much the more bound, as he is an appointed and established ruler in the ecclesiastical commonwealth, and not a private citizen alone.

The Bishop of New-Jersey professes to have conformed to the provisions of this canon, as the law which was to govern him in the premises. I shall show to this reverend Court that he has violated them entirely, and in a most vital point.

This canon is a part of the criminal law of the Church. And as my learned associate, Mr. Parker, has demonstrated to this Court, is to be restricted in its operation to its actual and precise relation. Its punitive operation is to be confined and limited to the crime which it particularly defines.

The whole force of this canon, under which this charge is made, is in the language of definition by which the crime alleged to have been committed is described; and for the trial and punishment of which crime alone the canon was enacted, and under the allegation of which, alone, it can be made applicable to a particular offense.

The relations of independent dioceses are not to be disturbed by every two-penny local and personal complaint; by every personal and envious charge trumped up by selfish and ill-tempered ministers; by such questions of contemptible trifling, as have been made the subjects of testimony before this Court; as whether a clergyman stood or knelt when he said the absolution; whether he used in it the first or second personal pronoun plural; whether he wore on a

special occasion a surplice or a gown—when the counsel proposing this last question, and the Court allowing it, knew, or ought to have known, that there is no canon of the Church which requires him to use either, upon any occasion.

These may be important questions in New-Jersey churchmanship. They are questions of inconceivable and contemptible trifling in the larger mind of freer churches and more enlightened States.

But this canon was not enacted for such questions, and offenses to which they appertain can not be brought under the operation of this canon.

The canon is entitled, "Of a *misdemeanor* with which a clergyman is chargeable." "Crimes and misdemeanors are mere synonymous terms," says Blackstone; and the language of this canon is very precise in describing the misdemeanor referred to:

"*Shall conduct himself in such a way as is contrary to the rules of this Church*; AND *disgraceful to his office.*"

The description is not alternative and disjunctive. It is conjunctive and concrete.

The substance of the conduct which is the subject of complaint, must be such behavior as is in itself disgraceful to the office of the ministry, as well as a violation of the laws of this Church.

The learned, and generally self-governed counsel for the prosecution felt immediately the resistless force of this objection, when it was presented by my learned associate; and he could only answer it in a way which, he will permit me to say, was more disgraceful to himself, than any charge which has been brought against this respondent—by accusing him of hypocrisy and pretense, in his whole ministry in the city of New-Brunswick, which is made the subject of this investigation;—as "proud of his preaching talents, and given to excited preaching; wantonly intruding upon the parochial cure of another minister of the same Church, for the purpose of sapping the confidence of his people in that minister." The learned counsel employed still stronger terms in describing this alleged hypocrisy—of "a clergyman flaunting the banner of rebellion and resistance, and then coming into this Court and assuming the *rôle* of innocence."

The process of operation directed by this canon is prescribed with equal precision with the subject of the charge. First, the presenting and accusation of the clergyman involved in the charge, is by the ecclesiastical authority of the diocese in which the offense is alleged to have been committed.

The offender is ecclesiastically arrested on the spot, "in *flagrante delicto*," and is sent, like Paul from Cesarea, bound with a chain, to his own diocese for trial—to the Cæsar to whom he has legally appealed, to be delivered from the Jews.

The respondent stands before you, like Paul, thus bound and ready to answer,—delivered, at least, from the Jews in New-Jersey,—and, permit me to say, able to stand before this venerable Court and say, like Paul before Agrippa, "I would to God that not only you, but also all that hear me this day, were both almost and altogether such as I am, except these bonds."

In what manner information of the facts of such conduct shall have come to this foreign ecclesiastical authority, the canon does not define. He is only to have "reasonable ground for presuming the correctness of the information given," upon which information, his knowledge of the facts contained in the allegation must rest.

But he can not change the substance and nature of the allegation involved. It must be information of conduct in itself criminal—a "*misdemeanor*," "*conduct disgraceful to the office of the ministry.*"

The action of this ecclesiastical authority is a voluntary, not a compulsory action—an action in the prosecution of which he is to take the whole personal responsibility.

His pursuit of the charge is to be the result of his own conviction, that there has been an offense committed by the clergyman accused, within his diocese, which is "*disgraceful to his office*" as a minister of the Protestant Episcopal Church, and which ought, therefore, to be punished.

Such a presentment made, and notice given by this ecclesiastical authority, according to the canon, includes, therefore, in itself the twofold assumption, that he believes the truth of the accusation, and that he deems the conduct alleged to be "disgraceful to the office of the ministry."

I need not say that such responsibility, and such power to injure, demand great caution in the exercise of this power.

The very presentment thus made, and the notice thus given, in a manner so authoritative and public, is in itself the infliction of a most effective penalty. It is a serious impeachment, indeed, of the character of the clergyman who is made the subject of the accusation.

He stands at once before the Church, and before the public, openly accused by one of the Bishops of this Church, upon his own responsibility, with "conduct contrary to the rules of this Church, and disgraceful to his office."

The source of this Bishop's information is unknown. Some malicious slanderer may have given information utterly without foundation. In what elements of crime, indeed, the charge consists, may not be publicly declared.

But it is known, as widely as newspapers can spread the intelligence, that the clergyman involved has been arrested for crime, and sent home in bonds to his own diocese, to be tried and punished.

And this foreign Bishop assumes the responsibility, of solemnly saying he believes the charge to be true, and he deems the conduct criminal and disgraceful; and he therefore becomes the first open prosecutor of a clergyman perhaps perfectly innocent of crime.

Such a responsibility is a grave assumption, and by no man to be lightly adopted.

May it please the Court, clerical character is a very delicate and a priceless treasure. The young man who has freely given up all the emoluments of the world, to preach the Gospel of Jesus to mankind; and consecrated all his talents and life to the effort of instructing, comforting, and saving his fellow-men, becomes, to a degree, a helpless creature. "Behold," said his divine Master, "I send you forth as a lamb among wolves." His whole wealth is in his integrity of character. His treasure is his pure, acknowledged, and transparent sincerity. His whole dependence is in the moral confidence of his fellow-men. He has like passions with other men. He partakes of all their infirmities. He must say, in that line of Terence which awakened the loud applause of the Roman theatre, "*Homo sum, et nihil humanum a me alienum puto.*" He is exposed to a thousand difficulties, misunderstandings, misinterpretations, misrepresentations, from which he has none of the protection, or the means of defense of other men. He ought to be the cherished object of every lover of virtue, and of every friend of good men.

Now, a bishop of this Church, to become the open prosecutor of a clergyman, stands pledged in a regard to his own safety, as well as to the honor of the Church, to be undeniably assured, of the criminal nature, and of the reality of the offense alleged. Obliged to enlist all the powers of his office, and all the influence of his own good name, for the conviction and punishment of the man whom he accuses, he bears a most serious responsibility; and no wise or good man can lightly assume it.

A clergyman thus openly and credibly charged with conduct undefined, except that it is "disgraceful to his office," is, in this very fact, destroyed. His reputation, his peace, his living, his prospects for the future, are all ruthlessly crushed by this exercise of hasty or malicious power in this exalted office. And he has no redress but the holding of every one in the procession of his calumniators, responsible before the courts of his country for the damages which he has sustained. And many a minister of Christ has had occasion, with Paul, to give thanks that he found in an infidel Cæsar, a protection which his own kinsmen according to the flesh, and his false brethren, refused to give.

I say, then, a wise and considerate bishop will never rush into a crisis like this. He will long hesitate before he inflicts a wound

which he can never heal. And he will not, can not plunge into an open accusation, in the disgraceful haste of this Bishop of New-Jersey, as if delighting in the opportunity—*receiving a complaint on the 16th of July*, 1867, *from New-Brunswick, and dating his own official assumption of the charge, on the same 16th of July*, 1867, *at Burlington.*

But, may it please the Court, when the "notice" is thus given, according to the provision of this canon, the ecclesiastical authority of the diocese to which the clergyman belongs, is required to assume the same responsibility; and he has the same right to judge for himself, of the character of the offense alleged, and of the adequacy and accuracy of the information with which the allegation comes.

This right can never be disputed in the Christian Church. The bishop in the Church of Christ is not a mere avenger to execute wrath, still less is he the brute or slavish instrument to inflict the punishment which the wrath of others may demand. He is the protector of the clergy, over whom he is placed. He is bound to see that they are defended, as well as punished. He is, in his stage of this canonical proceeding, to assume the whole responsibility of the further prosecution of the charge, and if he is convinced that there is neither "conduct disgraceful to the office of the ministry," in the subject of the charge, nor reasonable ground for believing the truth of the allegation, in the information furnished, it is an absurdity to suppose that he must involve himself personally in all the consequences which may result from a false accusation.

All that is required of him is to proceed against the clergyman; and in this assumption of the process, he retains the adjudication in his own hands, subject to his own consideration and wise administration, to be dealt with as his convenience may allow. For all clergymen in the Diocese of New-York, the language of canon 17, of this diocese, defines and secures this right, and secures to the bishop, in every case of accusation, the authority of personal consideration and judgment.

This 17th canon provides, that, "whenever the bishop shall have reason to *believe*, that any clergyman is under the imputation of having been guilty of any offense or misconduct, for which he is liable to be tried; and that the interest of the Church requires an investigation, "it shall be his duty to appoint a committee" to examine the case.

This is the next step in the process here defined. The bishop is compelled to assume the responsibility of a personal decision, that, according to the language of the canon, the conduct alleged is both "contrary to the rules of this Church, and disgraceful to the office

of the ministry;" and that there is reasonable ground for presuming that such disgraceful conduct is justly charged upon the clergyman who is the subject of the accusation.

But if the declared opinion of a foreign bishop, to whose diocese the clergyman involved is a stranger, be, as I have described it, the infliction of an actual penalty, in this indorsment of a charge of criminal and disgraceful conduct, how much more grievous is the avowed opinion of his own bishop that he is a criminal;—a bishop, whose certificate to his blameless conduct is essential to his remaining usefully in the diocese, and to his possible removal out of it?

To arrest a clergyman in the course of a laborious and painful ministry, under the cover of some secret charge of "conduct disgraceful to his ministry," and to command him to appear before a committee appointed to inquire into the truth of this charge, is a most serious and responsible act indeed.

It is an act of episcopal authority which, in itself, would be sufficient to destroy the character, and to annihilate the usefulness of any clergyman who has not position, reputation, and popularity sufficient, to overcome the power of the aggression, and to outweigh the alleged opinion of the bishop.

And if a committee of five persons can be found, according to this canon, who, without examining in the presence of this clergyman thus accused, a single witness of the conduct alleged to be disgraceful to his office, or having any ground for their decision, other than the secondary information of some secret informers who accuse him, shall hasten to declare, that "there is, in their opinion, sufficient ground for presentment" for this alleged "disgraceful conduct," I have only to say, you have already inflicted upon him all the evil which the declared opinion of the bishop, three presbyters, and two laymen is competent to inflict.

You have dishonored that clergyman's reputation, in a way and to a degree, which no trial can clear or vindicate, but by heaping public contumely and disgrace, upon the Bishop and this committee in their turn. And you compel the clergyman accused, to appear before you in trial, not acknowledged innocent until he is proved to be guilty; but compelled to beat and buffet the whole current of this publicly declared opinion of his bishop, and of this committee of his appointment, in the effort to establish his innocence of crime. With what success this feat may be then accomplished, all the partial and injurious proceedings of the present Court in relation to this respondent, furnish an abundant and painful illustration.

Perhaps it is too much to expect that such a case can ever obtain a tribunal, created for the very purpose of carrying out this predeclared opinion already so concrete and influential, sufficiently

independent and daring, to sacrifice for one clergyman, and he, perhaps, a youth under the ban of persecution, the approbation of five leading gentlemen, directed and indorsed by the previously declared belief of the Bishop himself. To warrant, authorize, establish such a proceeding as this, there should be indeed, "conduct" alleged by all these influential parties, in reference to which there could be no question that it was "disgraceful" in itself, "to the office of the ministry." And if such conduct be not absolutely proved, and the clergyman accused destroyed, as an outcast for whom no man careth, civil justice must have lost its power, if all these parties, thus conspiring to defame, can not be held amenable for the personal damages, for which their combined and hasty action has made them indubitably responsible.

If it please the Court, I am merely now arguing the general principles which are involved in the canon, under which this respondent has been brought here, in a contingency quite conceivable, and I beg you to consider the injustice and injury which such a proceeding must inflict.

Such an episcopal act, in the crisis which I have now supposed in this argument, must inevitably result, in the issue to be finally obtained, either in destroying the character of the Bishop, or of the clergyman involved.

It brands the clergyman as a criminal in the declared opinion of his Bishop, before any trial has been held. Indeed, it makes any trial almost null and void. So far as it goes, it has already, in itself, inflicted a wound upon the reputation of the clergyman, or his Bishop, which no time can heal or remove. It inevitably stamps, in the view of others, either the clergyman as a criminal, or the Bishop as an oppressor.

Such a proceeding inaugurates a conflict which no future time can allay. It compels the congregation under the pastoral charge of this clergyman, to decide immediately for themselves, the question whether their pastor is guilty or persecuted; whether they will adhere to him or renounce him.

But it necessitates, inevitably, another question—whether that Bishop can ever appear in that congregation again, as the accepted and venerated overseer of the flock committed to him.

The action of human affection is not a slow process of time, nor the result of argument. It decides immediately, and with difficulty ever revokes its decision. The congregation will decide this question for themselves, without waiting for the slow process of a trial, whether they believe their pastor guilty of "conduct disgraceful to his office," or whether they esteem him, though persecuted, still worthy of their affection and respect.

If in their view or belief their pastor is thus guilty of conduct for which he ought to be tried and punished, he is in reality punished already. His personal character, his efficient ministry, his influence for good to them, and his actual living and home among them, already are destroyed; and no trial can ever restore them to him there. He may wander elsewhere, but probably with no better success or hope. He is apparently doomed for life, under the destructive power of the imputations, which the declared belief of his Bishop has heaped upon him.

But if in their view he is not thus guilty, your whole process has made that Bishop, in their eyes, an unjust oppressor. The whole paternal character of the high office has been rudely cast away; and never again can that Bishop appear in that church, and among that people, the former object of their welcome, favor, and regard.

May it please this Court to consider the solemnity of this crisis. It is an inevitable one, if these absurd and disgraceful trials, upon mere formal or local questions, are to be carried on in the bosom of the Church, by episcopal authority, to gratify the envy and spleen of particular controversialists, under the solemn pretense and guise of great moral principles; and if a canon, which could only have been intended to apply to the most manifest moral delinquencies, is to be perverted in its operation, to cover every trifling imaginary offense against the formalism of a rubric, or the assumption of a clerical claim.

It is a crisis inseparable from this perverse confusion of formalisms and morality, of which the whole process of this New-Jersey complaint, adopted and carried on in this trial in New-York, is a most transparent and undeniable instance.

And whatever disgraceful conduct the eminent counsel for the prosecution may consider there might have been, in the preaching of the Gospel, though prohibited and protested against, in the city of New-Brunswick, it dwindles into total insignificance, when compared with the disgrace of this combination of exalted station, persevering energy, and intense hostility, to destroy a youth, whose whole crime was that he preached the Gospel according to the will of his Master, after he was forbidden by the will of man. His disgrace will soon be forgotten and forgiven by the public. The dishonor of his persecutors will abide as long as the Church shall remain, and their names be recorded in its history.

And now, may it please the Court, I would bring this discussion of the general principles involved in this canon, into a direct and personal application to the present case.

I demand to be informed, what is the "*conduct contrary to the rules of this Church and disgraceful to the office of the ministry,*" which the Bishop of New-Jersey has thought fit to embody in a

respondent in this case, and which the Bishop of ... himself compelled to indorse and to place before ...urt for trial.

...he trail of this solemn charge in the report of a com- ...three presbyters and two laymen, which, in obedience to ...and of the Bishop of this diocese, they have laid upon ...le for trial.

...s a most remarkable document for five Christian men to frame ... exhibition of their idea of human guilt. Lest you should forget ... desire to read it to you again. That it may not be forgotten, I ...ll do my best to perpetuate it in human memory.

It has weight of absurdity enough to make it sink beyond the reach of man's recovery. I have no doubt the gentlemen who have signed it will see the day when they will cease to desire that it should be remembered as any part of the history of their own lives:

"The undersigned, a committee appointed by the Standing Committee of the Diocese of New-York, as the ecclesiastical authority of said diocese, under the provisions of canon 17 of said diocese, to examine the case of Rev. Stephen H. Tyng, Jr., a presbyter canonically resident in said diocese, upon a certain notice given to the said Standing Committee by the Right Reverend the Bishop of New-Jersey, having made such examination, and there being in their opinion sufficient grounds for such presentment, do hereby present the said Rev. Stephen H. Tyng, Jr., to you for trial.

"Specification 1st.—In this, that the said Rev. Stephen H. Tyng, Jr., did, on the morning of Sunday, the 14th day of July, 1867, within the corporate bounds of the city of New-Brunswick, in the Diocese of New-Jersey, which city then constituted the parochial cure of Rev. Alfred Stubbs, D.D., and Rev. Edward B. Boggs, D.D., ministers of the Protestant Episcopal Church duly settled and in charge of congregations in said city, officiate by preaching and by reading prayers within the said parochial cure of the said Rev. Alfred Stubbs, D.D., and of the said Rev. Edward B. Boggs, D.D., without the permission, or permissions, of either of them, or of the church-wardens and vestrymen, or ministers of either of the congregations, or a majority of said wardens and trustees.

"Specification 2d.—In that the said Rev. Stephen H. Tyng, Jr., did, in the evening of the day aforesaid, within the corporate limits of the city aforesaid, officiate by preaching and by reading prayers within the said parochial cure of the said Alfred Stubbs, D.D., and Edward B. Boggs, D.D., without the permission, or permissions, of either of them, or of the church-wardens and vestrymen, or ministers of either of the congregations, or a majority of such wardens and vestrymen or trustees.

"Dated at the city of New-York, the 7th day of October, A.D 1867.

(Signed) WILLIAM WALTON, D.D.,
SAMUEL M. HASKINS, D.D.,
R. S. HOWLAND, D.D.,
WILLIAM E. CURTIS,
R. M. HARRISON."

This is their record, and this is all. "*Preaching and reading prayers.*" This is the offense. "*Preaching and reading prayers within the corporate bounds of the city of New-Brunswick.*" This is the location. Doing this *without the consent* of "the Rev. Alfred Stubbs, D.D., and the Rev. Edward B. Boggs, D.D." This is the crime.

Let us investigate it. Is it a reality, transacted by sane, intelligent, and Christian men—men who really love their Saviour—men who truly respect the Church—men of common sense, who have a particle of just concern for their own good name? It sounds far more like some wicked satire of the enemy; like an attempt at an imposition upon all concerned. One scarcely wonders that a daily paper should stigmatize the whole of it as "an ecclesiastical joke."

Is it conceivable that any intelligent human being could really, soberly consider this preaching and reading prayers a *crime* in a minister of the Protestant Episcopal Church, to be punished by the judges?

Such seems to have been the estimate of morality and guilt, formed in the Diocese of New Jersey, adopted by the ecclesiastical authority of New-York, and laid by this combined authority before this Court for trial and punishment.

Whether this reverend Court is also to unite in this amazing verdict, seal its ruinous principle with their decision, and promulgate this as the morality and law of this Church, remains to be revealed.

The story of the respondent's relation to this matter, as it stands in evidence before this Court, is simply told. On Saturday, the 13th of July, he made a visit to a family of his own parishioners, whose summer residence was in the neighborhood of the city of New-Brunswick. He there received an invitation to preach on the next day (Sunday, the 14th) in St. James's Methodist Episcopal Church in New-Brunswick, which invitation he accepted. He found a public notice given in the newspapers of New-Brunswick, for which he had no resposibility, that he was expected so to preach. Late on Saturday evening he received a note from the Rev. Dr. Stubbs, dated Princeton, July 12th, of which the following extract refers to this subject:

"Information was given me this morning, by the Rev. Edward Boggs, D.D., that he had seen a notice published in the New-Bruns-

wick papers, that you would officiate on Sunday next in New-Brunswick, for a congregation of the Methodist Society. On consulting the Bishop of the Diocese, he authorized me to say that he would not suffer the law of the Church to be violated with impunity. And I beg you therefore to desist from that service, which is plainly forbidden by the 12th canon.

"You will, I trust, readily comply with this request, prompted, as it is, by the earnest desire to preserve the unity and peace of the Church, and to promote concord among brethren."

Notwithstanding this note, to the authority claimed in which he did not yield his assent, he did fulfill his engagement to preach in that church twice on Sunday, the 14th July.

It is very manifest that there might be several considerations of adequate force, to lead the respondent to refuse submission to this threatening note of Dr. Stubbs, beyond the mere self-condemning character of the note itself.

He might justly have urged that Dr. Stubbs had no right under any canon of the Church to assume the authority which he thus claimed; that the canon under the authority of which he professed to act, gave him no such individual right as one minister in a city in which there were more than one, when the other had not united in this prohibition.

That he, the respondent, was violating no law of the Church, and therefore was amenable to no punitive power of Bishop Odenheimer.

That it was unreasonable to demand of the respondent, when a public notice had been given of this service on the ensuing Sabbath, that he should, late in the evening of Saturday, when all the arrangements for such service had been made, silently refuse to fulfill the expectation at the mere arbitrary request of Dr. Stubbs.

That should the respondent have given as a public reason for such refusal, Dr. Stubbs's personal prohibition, it would have tended greatly to discredit the character of Dr. Stubbs, in his own city, and to alienate from him the respect and confidence of this people.

He could hardly have imagined, in consistence with a decent respect for Dr. Stubbs, that Dr. Stubbs would have pursued the matter in the vindictive spirit with which he has acted in this case. If he could have anticipated it, it was impossible, in consistency with his own self-respect, to be intimidated by such threats; and had he wished to injure Dr. Stubbs in his personal character and relations to the people of New-Brunswick, he could hardly have conceived a better occasion or instrument than the publication of this prohibition, and his submission to it, under all the circumstances in which it had been issued.

To keep it quietly and take no notice of it, was the kindest and most respectful action toward Dr. Stubbs, of which the whole event was susceptible, and just that course the respondent chose to adopt.

The common sense of mankind would say, precisely as the provisions of the canons of our Church say, as I shall hereafter demonstrate, that over this Methodist Episcopal Church Dr. Stubbs had not the remotest pretense to a right of control. The lowest estimate of the proprieties of social life would have led Dr. Stubbs, if he did not feel disposed to welcome a visiting clergyman of his own Church to the city of his dwelling, at least to abstain from a rude missile of repulsion, sent to a friend's house in the last hours of the week, to insult him, and to insult the family of that friend, by this coarse threat of diocesan punishment if he dared to preach for what Dr. Stubbs chose to call a "Methodist Society."

The respondent therefore treated Dr. Stubbs's rude communication precisely as it ought to have been treated, and had too much respect for the honor of his own Church to allow that to be disgraced, by submission to such pretensions as were put forth by Dr. Stubbs; or by an acknowledgment that Dr. Stubbs had any authority whatsoever in the premises.

He did proceed to read the prayers of his Church, and preach the Gospel in this Methodist church. One would think if the spirit of Paul had influenced the heart of Dr. Stubbs, he would have united in the Apostle's rejoicing, that in every way Christ was preached. But manifestly Paul's spirit was not the spirit of Stubbs.

The next step we have is an appeal on Tuesday, the 16th, giving information to the Bishop of the Diocese of New-Jersey, of the offense thus committed by the respondent, and expressing great "fear if this offense be not reproved, it may be repeated, to the great injury of the Church in this place."

The Protestant Episcopal Church in New-Brunswick to be injured by the preaching of the Gospel to a congregation of Methodists! If he was afraid of his own flock straying to find a Gospel abroad, which they failed to get at home, the answer of old Adams, of Wintringham, to a similar complaint, would have been most appropriate: "Brother, salt your sheep, and they will never wander."

But Dr. Stubbs seemed to know no other plan than Joshua's proposal of prohibition, when two unlicensed ones prophesied in the camp, "My lord Moses, forbid them." (Num. 11 : 28.)

Happy would it have been for the credit of the Church in New-Jersey, if the spirit even of Moses had descended there: "Enviest thou for my sake? would God that all the Lord's people were prophets, and that the Lord would put His spirit upon them!"

So would White have answered; so would Griswold. But alas!

in the Episcopate of our day, the spirit of White and Griswold seems as far remote as the spirit of Moses and of Paul.

The overseer of New-Jersey is caught at once in this snare of vain and brief authority.

Dr. Stubbs, Dr. Boggs, and Mr. Hoffman, have lodged their complaint, and in the terms of the canon now under consideration, declare that the respondent subjected himself to the penalties provided in this canon for misdemeanor.

The famous Lord Strafford, when he was tried for treason, and his adversaries, incompetent to prove the crime, affirmed that the many felonies which they had proved amounted to treason, simply asked, in reply, to be informed by his accusers, "How many white crows it would take to make a black crow?" and the inquiry would be equally pertinent, How many preachings and reading prayers in New-Jersey, would be required to constitute a misdemeanor or a crime in that diocese?

These three gentlemen have established the principle, by their united assent, that preaching the Gospel and reading prayers in the city of New-Brunswick, without their consent, is in itself, conduct contrary to the rules of this Church, and disgraceful to the office of the ministry. To arrest this, they supplicate the interposition of the Bishop of New-Jersey, lest it should be repeated, to the great injury of the Church in New-Brunswick.

The Bishop of New-Jersey rushes immediately, *on the same day*, to fulfill his appointed portion of this absurd proceeding. And he begins his work:

"*In obedience to section* 1, *canon* 3, *title* 2, *of the Digest, I hereby give notice*, that the Rev. S. H. Tyng, Jr., belonging to the Diocese of New-York, has conducted himself, in the Diocese of New-Jersey, in such a way as is contrary to the rules of the Protestant Episcopal Church." * * * *

Here the Bishop of New-Jersey stops. But the canon does not stop here. The canon says a misdemeanor to be thus complained of, shall be "conduct," not only "contrary to the rules of this Church," but "*disgraceful to the office of the ministry.*"

By this canon, the Bishop of New-Jersey was to be governed. It was the only law which gave him the right to lay the hand of his office upon any clergyman not responsible to him as a member of his diocese. And if he will claim the privilege to arrest a clergyman from another diocese, under the provisions of this canon, he must charge him with the offenses which this canon prescribes.

The Bishop of New-Jersey can not so accuse the respondent in this case. He dare not do it. He will not be persuaded to set his hand to a statement so undeniably false.

The bigotry and assumptions of Stubbs and Boggs may confound all the distinctions of moral right and wrong, and consider a neglect of their vain assumptions, conduct as criminal as neglect of the law of God. But when they bring their accusations to the candid conscience of their bishop, his soul relucts at it. He can not do it. He can give the notice required; he can go as far as he dares to go, in the defamation of the character of the intended victim of Stubbs and Boggs. But when it comes to the solemn accusation of a presbyter of the Church, from one bishop to another, it is impossible—*he can not lie;* yet Stubbs and Boggs gain nothing unless he will. But Stubbs and Boggs can not force him to this; and he annihilates the whole force and operation of the canon, sooner than he will charge his conscience and his soul with falsehood.

From my soul I honor him for his fidelity. But what becomes of the canon under which he professes to act, and by which alone he is authorized to act in the premises at all? He has destroyed it; and destroyed its operation completely; and his "notice" becomes no more than a blank paper sent to the ecclesiastical authority of New-York.

"He says, "In obedience to sec. 1, can. 3, title 2, I hereby give notice," etc. But he gives no such notice as the canon demands. He gives a notice which the canon will not adopt, and can not justify; and which no other ecclesiastical authority in the land, as candid as himself, would for a moment regard.

When this notice, so completely defective, came to the ecclesiastical authority of New-York, unfortunately for the reputation of this diocese, its Bishop was abroad from the country. How this Standing Committee, having in its number, at least some respectable and legal minds—for it included no less a mind than the eminent counsel of this prosecution—how it persuaded itself to accept this notice, I hardly dare to conceive.

I well understand and thoroughly feel there is much in a name. I can not divest myself from the conviction, that in this prosecution there has been much in the name. I will venture to assert, could you have removed a name which so many of these gentlemen were not averse to see dishonored, and substitute some one of the honored names of our Church in this diocese, the fatal flaw in this document would never have been overlooked. That ecclesiastical authority would have cast it aside at once, as utterly untenable, uncanonical, illegal.

They would never have thought of appointing a committee to examine or inquire concerning it. This first step in New-York was, as every succeeding step has been, intensely personal, and apparently indifferent to justice, if the person could be reached.

This characteristic is too palpable and discriminate to be denied or doubted.

To the minds of this Standing Committee, this garbled document from New-Jersey was enough; and they referred it to a committee of inquiry, composed of three presbyters of the Church and two laymen. It was the duty of that committee to compare this notice of the Bishop of New-Jersey, with the provisions of the canon, under the authority of which it was sent to this diocese.

I can not believe that they did so compare it, in a personal examination. It is incredible to me, that upright legal gentlemen would have submitted their consciences and their reputations to the acceptance and indorsement of such a paper. It had not a particle of authority. It ought not to have had a moment's consideration. But the ball was already started down the declivity, and it was not to be stopped there.

To the minds of this committee, to whom the Standing Committee referred this notice, it was enough, though there probably is not a court of law on earth that would not have brushed it from their table as worthless and absurd.

The persecution started with Stubbs and Boggs, apparently, as an ebullition of temper and passion; when it came to this Standing Committee, it appears to have became a fixed purpose of determinate hostility. The vehemence of the passion had passed; but the intense determination of the intent had more than supplied its place.

The committee of inquiry rapidly reported according to their direction, and the Standing Committee, without waiting for the return of the Bishop, hastened to organize a Court, to carry out the purposes for which the whole scheme had been prepared.

In the meantime, the Bishop of this diocese returned. He had not been involved in any of the preceding process of moral entanglement. The whole case was in his hands. There was still the opportunity for reason and justice to prevail. He had the indubitable right to arrest all further proceeding, and to withhold all further action in the case.

I regret to be obliged to say, he did not elect to do so. Accordingly the whole case is renewed by his voluntary choice, and upon his spontaneous responsibility, upon the inconceivable basis of moral confusion which I have already so distinctly traced.

The Bishop of this diocese thus unequivocally adds his seal to this New-Jersey statement. He also indorses the complaint of Stubbs and Boggs, that preaching or reading prayers, in the city of New-Brunswick, without their consent, is "conduct in a minister of this Church contrary to the rules of the Church, and *disgraceful to his*

office;" though they confess, and he also confesses, that all the "disgrace" of this conduct would have been removed, if the criminal had asked and obtained their consent, and thus had made them with him "*participes criminis.*"

I am bound to believe the Bishop of New-York sincere in his conviction, though I frankly say, such has been my respect for my diocesan, that all the men in the world would not have been able to persuade me, to believe this decision possible, in anticipation of his own personal and positive act.

But this amazing conclusion the Bishop of New-York has also adopted and proclaimed. And this reverend Court has been commissioned, by his order, for the trial of this charge; and the respondent has appeared before them, loaded with this whole tremendous burden of authority and imputation against him, and apparently without one countenance of sympathy or candor among all who have opposed him, in any stage of the proceedings.

Any proceeding more uncalled for, more unreasonable, more injurious, or more unjust, it has never fallen to my lot to know. But the whole charge has, in actual trial, failed; Because the canon under which it was made and instituted has been garbled for the purpose of obtaining a judgment under it; Because the specifications of the presentment do not meet or justify the charge under which they are made; Because not a particle of testimony has been produced to support, or pretended to support, the original charge demanded by the language of the canon.

And the respondent was incontestably entitled to his discharge, in a dismissal of the whole case, according to the motion of my associate, and is now entitled to an absolute acquittal of the accusation upon the same basis of claim.

The whole prosecution has broken down completely in the principle of its authority. Not a particle of evidence, really sustaining it, has been produced; and no one is more conscious of that than the eminent counsel for the prosecution, I am perfectly sure.

And as this Court values its duty to God, to the Church, to the respondent in this case, and to its own reputation for intelligence, integrity, and impartiality, I call upon them not to suffer themselves to be made the instruments of a low, personal, party clamor for the destruction of one of the youngest and feeblest of their brethren in the ministry of the Church.

May it please the Court: From this examination of the canon under which this charge has been brought here, and the respondent has been here arraigned, I proceed to examine the actual facts involved in the case, as they appear in the presentment, the testimony, and the law.

The presentment laid upon your table makes a new charge, of another crime, upon the respondent, and for this he has been arraigned before this Court. It is: "That, on the morning of Sunday, the 14th day of July, 1867, and in the evening of the same day, he did, within the corporate bounds of the city of New-Brunswick, in the diocese of New-Jersey, which city then constituted the parochial cure of Rev. Alfred Stubbs, D.D., and of Rev. Edward B. Boggs, D.D., ministers of the Protestant Episcopal Church, duly settled and in charge of congregations in said city, officiate by preaching and reading prayers, without the permission or permissions of these clergymen, or of the church-wardens and vestrymen, or ministers of either of the congregations, or a majority of said wardens and trustees."

I beg leave to call the attention of the Court to the looseness of this document. The gentlemen signing this presentment have not referred the Court to any law or canon which has been violated by the action here charged upon the respondent; nor affirmed, in their presentment, that any such law or canon of the Protestant Episcopal Church has been violated by such action.

Were we disposed, in the defense, to make scrupulous but fair objections, such as would be sustained in every criminal action, in all courts of law, we might, with equal reason, object to this presentment, as we have felt it our duty to object to the "notice" from the Bishop of New-Jersey. It is, manifestly, utterly defective as an indictment, and it would be most unjust to convict the person accused, under the general terms of its allegations.

We are obliged to search and imagine for ourselves, by what law of the Church the respondent is to be tried, and with the violation of what canon he is charged.

The canon familiarly referred to, as applicable to this case, and, perhaps, as designed to be applied to it, in the language of this presentment, is canon 12, section 6, title 1, of the Canons of the General Convention.

Its language is: "No minister belonging to this Church shall officiate, either by preaching, reading prayers, or otherwise, in the parish, or within the parochial cure of another clergyman, unless he have received express permission, for that purpose, from the minister of the parish or cure, or, in his absence, from the church-wardens and vestrymen, or trustees of the congregation, or a majority of them."

May it please the Court, in applying the language of this canon to the case before us, I deny that the respondent has "officiated, by preaching, reading prayers, or otherwise, in the parish, or within the

parochial cure" of the Rev. Dr. Stubbs, and the Rev. Dr. Boggs, or of either of them, as charged in this presentment.

The issue formed by this presentment has now been tried, according to the will and ruling of this Court; and not a particle of testimony has been here produced, to prove that the respondent has violated this canon in any of its prescriptions, or can be made amenable, before this tribunal of the Church, for any offense under its provisions.

Before this canon can be brought into application to any act charged upon the respondent, two fundamental questions are to be settled.

What is the legal and authorized meaning of the terms "parish and parochial cure," in the language of the Protestant Episcopal Church? What is the meaning of the term "officiate," according to the same standard of definition?

Before I examine particularly any of the testimony presented here on either side of this case, I ask the Court to consider the two questions which I have thus suggested.

First. What is the meaning of the terms "parish and parochial cure," in the language of the Protestant Episcopal Church, and particularly in the provisions of this canon?

The actual offense specified as sustaining the charge against the respondent in this presentment, and sought to be proved by witnesses produced, is, that he did preach and read prayers in a Methodist Episcopal church, called the Church of St. James, in the city of New-Brunswick. The basis upon which this act is made an offense against this canon is the assertion, (which the chief witness for the prosecution, the Rev. Dr. Stubbs, particularly renounced and refuted, in his cross-examination here,) that this Methodist church is in the parish, and is a part of the parochial cure, of the Rev. Dr. Stubbs and the Rev. Dr. Boggs.

The foundation of this claim for Dr. Stubbs—a claim which, I beg leave to remind the Court, Dr. Stubbs himself refused here to make—is, in the language of the presentment, that "the corporate bounds of the city of New Brunswick," or "the city of New-Brunswick," both which expressions are used in this presentment, within which this Methodist church stands, "then constituted the parochial cure of the Rev. Dr. Stubbs and the Rev. Dr. Boggs."

May it please the Court, is a *parish* or *parochial* cure, in the language of our Church, a cure of land and territorial boundary, including the cure of all and every thing dwelling within the limits of such local boundary? or is it a cure of souls, of persons particularly defined and designated, and personally numbered and recorded, dwelling therein?

The language and definitions of the common law upon the subject of these questions, have been effectually discussed by my learned associates. I shall confine myself to the language of the Church.

And, may it please the Court, the whole language and provisions, and the common use of terms in the canons and offices of our Church, indubitably settle the question.

This habitual language makes what I shall call the *territorial* claim, in opposition to the *personal* claim, as marking and defining the limits of a parish, impossible and beyond the reach of rational support.

In reference to the terms "parish" and "parochial cure," the language of this very section of the canon adduced, settles the question. It distinctly affirms:

"If there be but one *church* or *congregation* within the limits of such village, town, township, borough, city, or such division of a city or town as herein provided, *the same* shall be deemed the parochial cure of the minister having charge *thereof*." The parish or parochial cure, is, in the language of this canon, the *church* or *congregation* of which the minister *has charge*. The words the *same* and *thereof* manifestly refer to the *church* or *congregation*. The only "charge" of the minister in the town or township, is the "*church*" or "congregation," of which he is the appointed pastor, established within that village or town. He has no charge, he can have none by any canon of the Church, of a town or village. Whatever else there may be within that village or town, his parish or parochial cure are expressly limited by this canon to the "church or congregation" regularly placed under his "charge." Of this he has the appointed and protected control. This is his parish. This is his parochial cure. Within the limits of this, throughout the boundaries of that town, he is secured from all interference and intrusion by this canon.

The public edifices belonging to his church, and the dwellings of his parishioners are his appointed parish throughout that town. Beyond the constituent limits of his own church or congregation, within that town, this canon gives him no right or power of control.

And to prove that any offense has been committed against the provisions of this canon, in his parish or parochial cure, it must be proved to have been perpetrated within the *church* or the *congregation* of which he has the appointed *charge*. They are the people dwelling within that town, who have united to constitute the church or congregation, as they are viewed collectively, or separately, who constitute his parish and his parochial cure. This Dr. Stubbs has here affirmed.

This definition of the terms parish and parochial cure, is the habitual use and employment of these terms in the language of the

Church, and it is the only use or interpretation which can make the canons containing these expressions, of practical fulfillment, or, in many cases, of possible application.

The terms *parish*, *parochial cure*, *church*, and *congregation*, are habitually everywhere in the language of our Church, employed as equivalent, synonymous, and interchangeable.

And although the term *parish* may sometimes be used in reference to territory, as we shall hereafter see, it is only in relation to the people dwelling therein, and not to any claim over territory or places unoccupied by them.

Section 1 of this canon 12, title 1, provides for the election of a minister into any *church* or *parish*. The terms are entirely interchangeable. They mean the same thing. They are a people united under a particular ministry, and are thus to choose their minister.

Section 2 regulates the officiating of a minister in any *parish* or *congregation*. These latter terms are also thus employed as equivalent and interchangeable. The officiating of a minister must be for and among a people.

Section 4 prescribes the duty of a minister in connection with a visitation from the Bishop to any church, and provides that notice shall be given by the minister, to his *parishioners*, and to the *congregation*. The *Church*, the *parishioners*, and the *congregation* are used as words entirely equivalent, referring to persons only, and to the same persons distinguished only in their individual and their collective character.

The same 4th section requires "information of the state of the *congregation*," to be given to the Bishop, defined in the margin as *parochial* reports, to be brought or sent to the Bishop at the stated meeting of the convention. The congregation and the parochial cure being precisely the same thing—the people belonging to the Church.

Section 5 provides that every minister shall keep a register of baptisms, confirmations, etc., "*within his cure*," employing the term as equivalent with his *congregation*.

It also provides that every minister of this Church shall make out and continue a list of all families and adult persons within his *cure*, to be continued by every future minister in the same *parish*.

Now, may it please the Court, the point which I mean to make, is, that these terms, *church*, *congregation*, *parish*, *cure*, *parochial cure* are used in all the language of this canon interchangeably with each other, as synonymous and equivalent; and all of them mean *persons* and none of them mean *territory*, and according to this limitation of their meaning, must they be elsewhere applied.

But what is even more effectual for the same purpose of interpretation, in the very section of the canon which describes the offense

alleged to have been committed in the case now before us, these terms are also used as equivalent and synonymous.

"No minister shall officiate in the *parish*, or within the *parochial cure*, of another clergyman unless he shall have received express permission for that purpose from the minister of the *parish* or *cure*, or, in his absence, from the trustees of the *congregation*." The parish, the cure, the congregation, are entirely equivalent terms, distinguished only as the people are individually or collectively considered; but these are always and only, the *people*—the *living souls*—who are regarded and described.

It is impossible rationally to deny or doubt that this canon describes, and means to describe, the parish or parochial cure in this definition, as the people thus associated, and this alone. An intrusion, as it is called in the parlance of this trial, of one minister into the parochial cure of another, can only be an effective intrusion, if it be into his church edifice, his congregation, or the families or dwellings of his parishioners.

The forbidden object of such intrusion, which is feared, and against which a minister is to be secured, is the alienation and severance from him of his parishioners, and not the abstraction of territory. And you may give him the control of the whole town and village in its territory, and still give him no security, if the location of his church edifice be near the boundary, as it has occurred in one instance, or a family immediately across the line becomes disaffected, and opens their dwelling for the central gathering of a separation, as has occurred in another.

When he asks you to protect him in his living ministry among his people, his parochial cure, and in reply, you offer to protect him in his material territory—for bread, which he desires, you give him a stone, and for a fish, a serpent. Your provision does not meet the case, and no territorial interpretation can meet it.

You may secure ministers who are unacceptable to their people, by whatever restrictions of territorial prohibition, you can never in this method keep for them a united people around an unsatisfying or unimproving ministry.

But the language of this canon upon this subject is uniform with the whole language of the Church. The idea of a parish or a parochial cure, is always that of a people, a cure of souls, whether considered in their collective character, as a church, a congregation, or in their individual aspect as parishioners.

Ministering to a parish is ministering to a people. Officiating in a parish is officiating among a people. The cure committed to a minister by the authority of the Church, is the cure of souls to be edified, instructed, and sanctified, according to the will of God.

Such is the habitual meaning of these terms in the language of the Church.

In the office for the ordination of Presbyters, the very place where we should look for accurate and distinct expressions upon this subject, various descriptive phrases are employed to illustrate this idea, and to enforce this serious and important charge.

The work of the ministry in its objects of influence, are "people committed to your charge"—"people committed to your cure and charge"—"as well the sick as the whole in these your cures"—"yourselves wholesome examples and patterns to the flock of Christ"—"Christian people, especially among them that are committed to your charge"—"they are the sheep of Christ, which he bought with his death, and for whom he shed his blood"—"the Church and congregation whom you must serve, is His spouse and body."

There can be no question as to the meaning of all these descriptions. The work for which the ministry of Christ is commissioned is like His Master's, to save the souls of gathered men, and not to watch the bounds of earthly territory.

The office for the Institution of a Presbyter in his location as a pastor, the "rector or minister of a parish or church," for these are the terms employed, contains the same interpretation in many expressions.

"We give you our license and authority to perform the office of a priest in the parish or church of———." "We do institute you into the said parish or church, possessed of full power to perform every act of sacredotal function among the people of the same"—"you are faithfully to feed that portion of the flock of Christ which is now intrusted to you"—"you are to enjoy the temporalities appertaining to your cure"—"be thou in all things a pattern to the flock committed to thy charge."

There can be no doubt about the meaning of these expressions.

These two offices are the two especially appointed to convey and proclaim the idea and will of the Church on this subject. To them we naturally go to ask, What is the office of the ministry among men? What is the charge committed to them? What is the responsibility which they bear? What are the rights which they possess? And thus, with absolute distinctness, do they teach upon this subject. Why need I multiply further quotations upon this subject?

This is the language of the Church in defining a parochial cure—a parish, and in establishing a regular ministry therein. It is uniformly, the people belonging to a particular congregation, wherever they shall dwell, committed to the charge of a minister set over them as a pastor. And it is the people only—that people who profess and claim to be members of the Protestant Episcopal Church—whether

regarded in their collective character as a Church, or in their individual rights as members of that body.

The very canon under which this presentment in its allegations is made, in the 5th section, gives a remarkable decision of this question in the affirmation of the interpretation thus presented.

In appointing a parish register for baptisms, and requiring the minister of a parish or church to keep it, the canon declares:

"The intention of the register of baptisms is hereby declared to be, as for other good uses, so especially for the proving of the *right of church-membership*, of those who have been *admitted into this Church* by the holy ordinance of baptism."

The same canon has ordered in a previous paragraph, that "the minister shall keep a register of *baptisms within his cure*," and it now interprets the meaning of his cure, by the added expressions of "the right of church-membership," and "admitted into this Church by the holy ordinance of baptism."

That is, the canon expressly orders a register to be kept, because the *cure*, the *church*, is not a territorial extent of land, the inhabitants of which are parishioners, but a selection of persons claiming individual membership, and it is important and necessary to prove the right by which these persons claim.

I submit to this Court that no provisions could be more distinct or imperative in the determination of the intent and purpose of the canon. A parish, a parochial cure, is not a selection of earthly territory, with a control of all whom it contains; but it is a specific collection of individuals having a common membership, by a common profession and demand, to be acknowledged and proved by proper register of the fact.

Upon this principle of interpretation, as the decision of the Church, given in all the language of the Church upon the subject, without the least qualification or reserve, must rest the prohibition, upon which the presentment before you has been founded, and ought to be tried.

The proof was to have been brought, *not* that the respondent did officiate by preaching or reading prayers "within the corporate boundaries of the city of New-Brunswick," still less in a well-known and acknowledged Methodist church in that city.

But, "in the parish and within the parochial cure," that is, by the decision of the Church, in the churches or among the congregations of the two complainants, or either of them, without their express permission.

I need not inform this respected Court that not one particle of proof has been offered in this trial, by the presentors or the prosecution, to establish the remotest aspect of such a charge. No witness has affected to assert it. No skill of the learned counsel, and no-

anxiety of the aggrieved complainants, have educed such a charge from a single witness on the stand.

And the counsel and the complainants can only make their real charge good by forcing an interpretation of the language of the canon, which will give them more trouble than relief in the results to which it will lead them. This will be made indubitably clear as I proceed.

But, may it please the Court, I will not be supposed to ignore, or pass over, the remaining language of the canon under consideration, upon which the learned counsel for the prosecution have insisted, as establishing this claim.

The provisions therein contained, yet more effectually overturn this asserted claim, and establish the ground of interpretation which I have assumed, and which I believe to be impregnable and absolute.

The question before you is not whether parishes, parochial cures, churches, congregations, have local boundaries, and positive, discernible local habitations, within which they are established, as their prescribed field of usefulness, and appointed scene of labor, and for fidelity in which they are held responsible to the Church and to its Glorious Head.

No reasonable man can doubt this. But here starts the fallacy of the claim upon which this presentment is founded.

Within these appointed, designated bounds, is the charge committed to the ministry of the Protestant Episcopal Church in the United States, the authority over the whole territory included within these limits? and with the right to forbid any and every other ministry than their own upon that territory?

Or, is it the charge and care of the churches, the congregations, of the Protestant Episcopal Church, and of the households and persons belonging to those churches and congregations, as parishioners, of which they have been made the ministers, and to which they have been sent?

May it please the Court, I affirm in the strongest possible manner that the whole provision, history, and action of this Church sustain the latter, and not the former position; and the language of this canon completely supports it; and the learned counsel for the prosecution has done nothing to weaken this conclusion.

Parish boundaries in this Church are territorial, no one doubts. They are the boundaries within which churches are established; and, as a rule, congregations and parishioners live; not a territory over which such churches or ministers may affect or claim exclusive control.

They are the guides of practical, orderly arrangement, recognized as in this canon provided, by the ecclesiastical authority of the

Church, for the purposes of edification to the Church, and not for instruments of arbitrary assumption by the ministry.

Accordingly, the canon before us proceeds—

"When parish boundaries are not defined by law, or settled by diocesan authority, or are not otherwise settled, they shall, for the purposes of this section," (that is, the section which prohibits officiating without permission,) be defined by the civil divisions of the State, as follows:

"Parish boundaries shall be the limits, as now fixed by law, of any village, town, township, incorporated borough, city, or the limits of some division thereof, which may have been recognized by the bishop, acting with the advice and consent of the standing committee, as constituting the boundaries of a parish."

"If there be but one church or congregation within the limits of such village, town, township, borough, city, or such division of a city or town as herein provided, the same shall be deemed the parochial cure of the minister having charge thereof."

"If there be two or more congregations or churches therein, it shall be deemed the cure of the ministers thereof; and the assent of a majority of such ministers shall be necessary."

According to the view which I have presented of the purpose of parish boundaries—

If there be but one church or congregation within the limits of a village, or a town, the whole village or town is the appointed field for the labor and the rights of the minister thereof, wherever in such village or town his parishioners dwell; and no other minister of this Church can officiate in his church, or among his parishioners, without his permission. This is clear and undoubted.

If there be two or more churches or congregations therein, the same rule shall equally apply to all.

But there is a singular confusion in the language of this latter paragraph, which it is difficult to evolve: "If there be two or more churches therein, *it* shall be deemed the cure of the ministers thereof."

There is an equal violation of grammatical construction here, whether the singular pronoun *it*, be made to refer to its immediate antecedents, "congregations or churches," or to "village or town," in an entirely separate sentence preceding.

It may be conceded as intended to refer to village or town, in the preceding sentence. Then the canon declares the whole village, town, or city referred to, to be the common and equal ground for all the parishes, parochial cures, congregations, or churches therein, and for all the ministers having charge thereof. But then it also carries with it some remarkable consequences, to which I will refer.

And I do not wonder that Judge Hoffman says concerning it:

"There is no part of the law of the Church which has occasioned me more perplexity; none more calculated to excite strong personal feelings; and none which requires a more thorough interposition of the general convention."

I ask the attention of the Court to some of the results of this interpretation.

In this assumption, which is the one demanded by this presentment, this provision of the canon *positively denies a territorial jurisdiction* to either or any of such ministers, if there be more than two in any town. It therefore cuts up the claim of these complainants by the roots.

It affirms a common right in all and each of these churches and ministers, to this whole described territory, and to their separate cures or congregations, wherever within the limits of this defined territory they may dwell.

It declares the *whole town* "*shall be deemed the cure of all the ministers*" having charge of the churches therein. Their rights are therefore equal, and equal in every part.

None of these ministers have, in their separate right, the slightest claim to territorial power against any other of their number.

They have no power of exclusion of each other from officiating in any and every way within this territory. The whole town has become their common and equal cure.

This canon can not, therefore, be brought as authority to confer a power, which it absolutely, and in express terms, refuses. Individual territorial rights are here distinctly prohibited. It can not be pretended, this Court will not pretend to say, will not dare to say, that rights of territorial control and exclusion which are thus distinctly refused to these ministers as individuals, and against each other, may still be assumed by them in common against all others besides themselves.

This Court will hardly say that the prohibition of the hostility of one dog in the manger is to be interpreted as the conceded authority for the hostility and bitterness of ten.

And yet, if I adopt the courteous appeals of the learned counsel for the prosecution, I may demand, "What else do these men want?"

I will illustrate this principle by the facts of the present case. By this canon, neither Stubbs nor Boggs, according to the interpretation under which they claim a penalty upon the respondent in this Court, have any personal, local, individual, separate right whatever, to distinct territorial jurisdiction within the corporate bounds of the city of New-Brunswick.

They can not, either of them, exclude the other from officiating in this common field, or in any part thereof, in any of the duties or

offices of their personal ministry. They may both officiate—by preaching, reading prayers—when and where they please, within the limits of that city.

By what law, I should be glad to know, may they acquire a legal right to do that, in combination, to which they have no claim in person? By what application of this canon may they combine to exclude any other minister, from the territory which they occupy only by the permission of this canon, and in which this canon forbids them to claim any separate personal control for themselves?

Neither Stubbs nor Boggs have a pretense, upon their own interpretation, to individual authority in any part of the city of New-Brunswick by the terms of this canon. They have the right to minister to their own congregations or parishioners whenever they please, and wherever these may dwell.

Neither of them has the personal right to exclude each other, or any other minister of this Church, from officiating in any way within the corporate limits of New-Brunswick. And if either Stubbs or Boggs should pretend personally to forbid any other clergyman from officiating within the corporate bounds of that city, as one of them did attempt in this case, his prohibition would be treated with contempt. And yet the learned counsel for the prosecution has rested the main strength of his argument and of his examination, over and over again, upon this fact of prohibition by Stubbs. He has asked every witness whose testimony could bear upon the subject, whether he had ever heard of such a thing, as a man daring to preach after he had been prohibited by a man like Stubbs.

What was this man Stubbs's coarse missive by his sexton to this respondent, forbidding him to preach in the Church of St. James, but an impudent pretense to an authority, which the very canon under which he comes here as a complainant absolutely refuses to him?

What difference would it make in this application of the canon whether there were two or twenty ministers in a town? No single one can pretend to this distinct authority. And I might, with as much authority and right, this day, prohibit Bishop Odenheimer from preaching in Cooper Institute or a Methodist church in the city of New-York, as Stubbs could pretend to have for prohibiting the respondent from preaching in the city of New-Brunswick.

Should I make the attempt, my impertinence and assumption would be treated, and justly, with the same contempt with which the respondent regarded the prohibition of Stubbs.

And yet these men, Stubbs and Boggs, claim the right—and this presentment is founded upon that claim—to exclude all other ministers, absolutely and without reason or explanation, by simply com-

bining to do in partnership, that which neither Stubbs nor Boggs has the slightest pretense of authority to do alone.

A more absurd pretense to authority was perhaps never made by man. By what law has this corporate right been secured to Stubbs and Boggs over the whole city of New-Brunswick?

Not by this canon, for the very section of the canon under which they profess to act in this claim explicitly prohibits it. And certainly no other law of the Church or State can be adduced as their authority. Neither of them can exclude from a foot of the territory in New-Brunswick in person. No act of incorporation has given them this control in partnership.

Neither of them can pretend that this Methodist church, in which the respondent preached, is part of his individual parish or parochial cure.

The counsel for the prosecution attempted to connect the hostility of Boggs with a fear of the abduction of something from the power of his free church, if this preaching were allowed in this Methodist church, although the testimony is before the Court that the two edifices are near a mile apart. And that pretense was too shallow to be more than insinuated.

"These men," as the learned counsel has taught me to call them, can gain no authority over this Methodist church in partnership, by any language or provision of this canon, under which they set up their arrogant claim before this Court.

Judge Hoffman wisely says, "It may, perhaps, be questioned whether such an address to persons of other denominations is even now within the canon."

I am bold to affirm, positively, that it is not. Neither Stubbs nor Boggs, personally or in partnership, can justly pretend to the slightest authority over this place, or right to minister within it.

And I respectfully appeal to this Court to decide with me that this canon, properly interpreted according to the habitual language and law of the Church, gives no territorial right of control to either, or to both of these parties, personally or in partnership, over the corporate limits and land of the city of New-Brunswick.

To fortify this position thus demonstrated, I appeal to the testimony of the Rev. Dr. Stubbs, and to the undisputed practice of them both.

They appear before this Court claiming "the corporate bounds of the city of New-Brunswick" as "their parochial cure."

They have entered their complaints against the respondent for preaching and reading prayers within their parochial cure, because he preached within the bounds of the city of New-Brunswick, although he is not alleged to have so "officiated" in either of their churches, or in any of the dwellings of their parishioners.

Now, may it please the Court, what has been the interpretation of this canon, under which these gentlemen have set up this preposterous claim, heretofore adopted by themselves? How have their own ministrations conformed to the standard of this demand?

Have they ever claimed or exercised the right of control over this whole territory of the city of New-Brunswick, or held themselves responsible for performing the offices of the ministry, which this territory demanded, as their acknowledged parochial cure, according to the provisions of this canon?

Section 4 of this canon says: "It shall be the duty of ministers to prepare young persons and others for the holy ordinance of confirmation.

"On notice being received from the bishop of his intention to visit any church, the minister shall give immediate notice to his parishioners individually, and also to the congregation, on the first occasion of public worship, after the receipt of said notice."

How have Stubbs and Boggs fulfilled this duty in their parochial cure? Have they given this notice to the inhabitants of the city of New-Brunswick individually, claimed in this complaint to be their parishioners? Have they ever given this notice to the members of this Methodist congregation claimed as their parishioners; or to the congregation thereof, claimed as a part of their parochial cure, on any occasion of public worship?

They have not the assurance to pretend it. But will they acknowledge themselves guilty of a violation of the canon and of "conduct contrary to the rules of their Church and disgraceful to their office as ministers" in their failure to do this?

No. They defend themselves against this charge, and justify their neglect of this command, and of their own duty under it, on the ground that the terms, "church, parishioners, congregation" herein used, are intended to describe the persons belonging to their separate churches and congregations—and them alone.

And what do they in this defense, but renounce the whole claim on which they have founded this complaint, that the whole city of New-Brunswick is their parochial cure.

I may make the same reference to every other provision of this canon, and it will be met in the same way.

Stubbs and Boggs have never included in their parochial reports to the Bishop, information concerning the whole city of New-Brunswick as their parochial cure—nor has the Bishop of New-Jersey who, "will not suffer the law of the Church to be violated with impunity in his diocese," ever required it of them—and yet this canon requires it.

Stubbs and Boggs have never kept a register of all baptisms, con-

firmations, communicants, marriages, and funerals in the city of New-Brunswick, claimed as their parochial cure. They have never extended such a register beyond the actual households and members of their own congregations as the proper subjects thereof, according to this canon.

Stubbs and Boggs have never made out or continued a list of all the families and adult persons in the city of New-Brunswick, claimed as their parish, as required by this canon. So Dr. Stubbs has solemnly testified before this Court, and by his own testimony and confession here, is as guilty of violating the express provisions of this canon as this respondent, whom he personally and bitterly seeks to destroy on this very account.

Had not this Court so graciously interposed for the protection of this "man" Stubbs—as the learned counsel has taught me to call him—and by its own arbitrary ruling shut out the questions which he ought to have been compelled to answer, he would have been found as guilty under every provision of this canon as he has sought to make the respondent.

Now, may it please the Court, by what justice or right, shall these men, Stubbs and Boggs, shelter themselves from all charges of guilt for violations of this canon, under the very interpretation of the canon which they renounce and refuse when it is brought into application to the respondent?

Shall they be permitted to come into this Court and plead—when this same canon requires particular duties from them, and imposes particular responsibilities upon them, in their parishes and parochial cures, that they have no territorial responsibility; that their parishes and parochial cures are the members of the Protestant Episcopal Church, and the congregations of such committed to their charge, and ask and receive the justification of this Court?

And when they wish to invoke the same canon for their protection against imagined intrusion, and to exclude some other minister whom they dislike from officiating in the city of New-Brunswick, shall they be allowed to shift their whole ground, and claim the whole territory of the city of New-Brunswick, as the limits of their parish and parochial cure?

I sincerely hope that no Court in this honored diocese will be found partial enough, and blind enough, to allow such profane juggling with truth, with solemn rights and obligations, to gratify the spirit of envious hostility and unseemly arrogance so vividly apparent in this whole proceeding.

The whole history and testimony of Stubbs and Boggs, the complainants here, annihilate the rectitude and authority of the claim which they pretend, and that which the learned counsel has been

pleased to call "ignorance, the densest ignorance," as characterizing his view of the defense, must be deemed to have spread its shadow over this Court, and all who are or shall be concerned in this prosecution, if this absurd, unfounded, and wicked claim can be allowed, merely to disgrace and destroy a clergyman whom Stubbs and Boggs choose to oppose and revile.

I wish further to show this reverend Court the impossibility of any other practicable interpretation of the canon now under consideration, than the one which I have given.

The language of the canon is, "No minister belonging to this Church shall officiate either by preaching, reading prayers, or otherwise, in the parish, or within the parochial cure of any other clergyman, unless he have received express permission for that purpose from the minister of the parish or cure, if there be but one in the village, town, or city, or if there be two or more churches or congregations, the assent of a majority of such ministers shall be necessary."

The complainants in this case aver that "the corporate bounds of the city of New-Brunswick" are their parochial cure in common; and the presentment before you, which is founded upon this complaint, charges the respondent with violating this canon, by so officiating within "the corporate bounds of the city of New-Brunswick, without the united or separate consent of these complainants."

We have, then, an actual case presented of the operation of this canon, under the interpretation of parochial rights and powers demanded by the complainants, and we may proceed in our examination of the operation of this principle of interpretation, in the field which they have presented to us as so harmonious and perfect in the city of New-Brunswick.

There are two churches and congregations, and two ministers having parochial cures in that city; and these two claim a common and undivided possession of the whole territory of that city.

To authorize any other minister to "officiate" in that city, according to their interpretation, "either by preaching, reading prayers, or otherwise," there must be demanded "express permission for that purpose," by "the assent of a majority" of these two—that is, from both of them combined.

According to their view, therefore, the canon forbids any minister to preach in that city without the consent of them both; that is, no minister can preach for Stubbs unless he has received express permission for that purpose from Boggs, or preach for Boggs without express permission received from Stubbs, or preach anywhere in the city of New-Brunswick without express permission received from both.

Upon this interpretation, therefore, each of these ministers is

made entirely dependent on the will of the other, for the privilege of asking or having any minister to preach for him in his own church, or to perform any official duty for him in his own congregation.

Dr. Stubbs's testimony in reference to this point, in his cross-examination, will hardly be forgotten; if there had been any escape from the force of it, by his own squirming, or by the dexterous help of his counsel, he must have found it; but he sought in vain.

Now, it will not meet the case to say that such a minister has received the express permission of either Stubbs or Boggs. He must, by the canon, have the express permission for that purpose of a majority of the ministers so resident.

It will not meet the case to say that the silent assent of Stubbs or Boggs, in declining a positive refusal of permission, may be construed into an express assent. This may be readily conceded to be the usage, but the counsel for this prosecution has scouted the argument to be derived from usage.

It must be remembered that it is neither Stubbs nor Boggs who is to be presented, tried, and punished, under the charge of violating the canon in such a case, but the luckless minister who may happen to be the unwitting victim between them both.

Some unsuspecting minister passing a few days with a friend in their neighborhood may happen to be caught in their wrath, and whichsoever of them may thrust him in between the upper and nether mill-stone of their possible discordance and dispute, he is equally sure of being ground and crushed, if either Stubbs or Boggs choose to inform against him; or if the Bishop of New-Jersey finds some other source of information, equally reliable, and chooses of his own motion to proceed against him for "conduct contrary to the rules of this Church and disgraceful to his office," because he has preached for Stubbs without the express permission of Boggs, or preached for Boggs without the express permission of Stubbs, or preached within the corporate bounds of the city of New-Brunswick, without the express permission of both.

May it please this reverend Court, conduct more disgraceful than the whole of this possible assumption, can hardly be imagined. Can any interpretation of the canon stand as just and reasonable law for this Church, which is to authorize such an exhibition, and such relations as these?

And yet this is an essential, an inevitable result, of that which I have called a territorial interpretation of a parish and parochial cure in this canon.

Stubbs and Boggs may walk up and down the streets of New-Brunswick, like a lordly pair, and "beat the bounds of their mighty parish" with all the assumed majesty of the London charity-boys,

exclaiming in unison, "No man shall preach or read prayers, or officiate otherwise, within the corporate bounds of the city of New-Brunswick, without our express permission first received."

And the Bishop of New-Jersey and the senior-warden of Christ church, New-Brunswick, as named in this case, may stand upon some neighboring Ebal and Gerizim, in opposite harmony and "concord among brethren," and chant the loud AMEN.

And Stubbs may turn to Boggs, and Boggs to Stubbs, and say responsively to each other, "And no man shall preach or read prayers for thee without my permission;" and the same solemn and authoritative response must come from Ebal and Gerizim, AMEN. And upon their interpretation of the canon they must be sustained; and the learned counsel for this prosecution would be obliged to call it "ignorance, the densest ignorance," to refuse them, if the high and honored authority of this great diocese should refuse them such support.

But the difficulties of poor Stubbs and Boggs have not ended here. The city of New-Brunswick remains "deemed," by the law of the Church, "the cure" of both. They have, therefore, common and equal rights in all this territory, and in every part thereof. Whatsoever is within the corporate bounds of the city of New-Brunswick belongs to them in common, and by an equal title.

What, then, will you do with this prohibition of officiating in the parish, or within the cure of another clergyman, without his permission, in reference to such ministers, upon this territorial principle? Neither of them has the right of prohibition against the other.

Every part of the common territory is the cure of each. It is expressly declared, "It shall so be deemed." And Stubbs may insist upon preaching in the church of Boggs, and Boggs has no power to exclude him; and Boggs may choose to officiate in every household of the church of Stubbs, and Stubbs can not forbid him. They may appeal to their bishop, and he must sustain them both.

Stubbs has no more canonical right in his own church than Boggs has; and Boggs may claim an equal right over all the families in Stubbs's parish, and Stubbs is without a remedy.

They have an equal, undivided, unchallengeable right, in every part of the territory of their common cure, "the corporate bounds of the city of New-Brunswick."

And, quarrel as they may, there is no provision in this canon which can shut them out from what, in these premises, they choose to do, upon this territorial interpretation of the canon, even though their flaming combination, like Samson's foxes, set the whole Church on fire

I humbly ask this reverend Court, and the authority which they represent, has the Protestant Episcopal Church intended to prepare

the way for such an exhibition under its authority? Can that be a rightful interpretation of its law which allows and authorizes it?

From all the difficulties thus recited, the *personal* interpretation of the canon rescues us.

It fixes the territorial boundaries of a parish as the field of its occupation. It protects the churches, congregations, parishioners, and ministers therein from all intrusion and interference in their actual occupation. It gives to every man his own cure, and it protects him in its enjoyment. It is susceptible of no one of the difficulties which have been presented. It is the precise fulfillment of the whole language of the Church upon this subject. And it is, beyond all rational dispute, the authorized, and the only just interpretation of this canon.

May it please the Court, the difficulties which I have here presented are by no means diminished as the size of the city included in the canon is enlarged.

The canon demands an "express permission to be received, before any minister belonging to this Church shall officiate, by preaching, reading prayers, or otherwise, in the parish, or within the parochial cure of another clergyman, from the minister of that parish, and, if there be two or more churches or congregations within any city, the assent of a majority of such ministers shall be necessary."

This provision, under the territorial interpretation assumed by Stubbs and Boggs, is just as applicable to the sixty churches of New-York as to the two in New-Brunswick.

By the canon, thus interpreted, the city of New-York is to be *deemed* the parish, the parochial cure of the ministers having charge of the churches and congregations within its corporate bounds.

No non-resident minister, therefore, can lawfully officiate in any way, in the city of New-York, on any single occasion, in any church or congregation within the corporate bounds of this city, without the express permission for that purpose received from a majority of the ministers having parishes or parochial cures therein.

That this prohibition is, and always has been practically disregarded by all, though sustained by universal, unexcepted usage, it is declared, does not annul the authority or destroy the latent power of the law; still less does it eradicate or modify the possible hostility or vindictive spirit of individuals who may choose to shelter their malice under its assumed authority.

I am sorry to be compelled to say, that the present case completely illustrates the certainty of this fact. The offense alleged against the respondent here, has been the known, acknowledged, unquestioned, habitual practice of hundreds of the ministers of this Church, in all its details. In its principle, and, in some degree, it has been equally

the habit of the whole ministry of this Church, from the beginning of its history. It has been repeatedly the act of ministers of this Church, in the city of New-Brunswick.

It is safe to say, that there never was an instance, in which an express permission has been asked, by any individual minister, from a majority of the ministers in the city of New-York, before officiating, by preaching, or reading prayers, or otherwise, in any one of the churches or congregations of this city.

Why Stubbs and Boggs have selected this instance to inaugurate the first exception, and to try what they might do to destroy one brother, and to stab another through him, may easily be accounted for, without conceding excessive tenacity for the honor of the law.

Nothing can be more true than the assertion of my learned associate: "What the younger Tyng has done, the same has the elder Tyng done before him."

When that elder Tyng was but a youth in the ministry, he was on a similar visit to friends in the city of Charleston, S. C. He was invited to preach every evening in a week, in the Charleston Theatre. He consented, perhaps, as the learned counsel for the prosecution would say, "because he was fond of excited preaching, and vain of his preaching talents." God must judge.

But he consented. Some respectable clergymen — *men*, as the learned counsel calls them, like Stubbs and Boggs — went immediately to the venerable Bishop Bowen, and reported the matter, as, in the language of these men, likely to do great injury to the Church. That venerable man invited the youthful minister to an interview, and to the hospitality of his table, and, after hearing the whole statement, said, "God forbid that I should put a straw in your way." And the young minister preached his week, and went his way; and one of the most important churches in Charleston was, in a degree, the fruit of this labor.

But different bishops from the class of Bowen—though he, too, was a High Churchman—have risen since. Well would it have been for the Bishop of New-Jersey, if the contact of a mitre transmitted had transferred with it the wisdom which became it. In those days we preached the Gospel freely, no man, with authority, forbidding.

But, upon the principle of interpretation and government contended for in the institution of this trial, the Bishop of New-York may be immediately, and as justly, called upon to present, in formal notice to the Bishop of Pennsylvania, perhaps, some minister of that diocese who has presumed to officiate, by preaching, or reading prayers, or otherwise, in the city of New-York, without the express assent, previously received, of a majority of the ministers having churches in this city.

He may demand his trial as thus charged with "conduct, contrary to the rules of this Church, and disgraceful to his office." He will demand it under the alternative of its refusal, of his own trial and punishment of this clergyman within three months.

And according to the precedent sought to be established in this case, the Bishop of Pennsylvania is bound to have that clergyman at once openly tried for this offense—nay, he can protect him from the possible oppression of New-York, only by trying him in Pennsylvania.

This clergyman, whoever he may be, however eminent, exemplary, and useful, may be sent home from the city of New-York, where he has dared to preach his Master's Gospel without the assent of a majority of the ministers in this city, previously received, though thousands of the ministers of this Church have done the same thing before; though it has been the habitual practice of all the ministers of the Church from the beginning of its history; publicly branded in the newspapers as a man, reckless of the sacred vows of his ordination, regardless of the solemnity of an oath, and rebellious to the just laws of the Church.

He may be thus openly insulted and degraded, before he is tried, by the constrained action of the Bishop of New-York, under the instigation of some "Church Union," a power behind the throne higher than the throne; a combination of certain ministers and laymen, who, from mere personal hostility, have combined to persecute and "*crush*" him. That is the word they use now. It is of no consequence that such an interpretation was never heard of before.

It is of no consequence, that under such an interpretation if assumed, the law has been dormant and inoperative.

It is of no consequence that two thousand ministers of the Church are at the same moment equally chargeable with the same offense.

It is of no consequence that the whole usage of the Church, *nemine contradicente*, has sustained it in all parts, and by all persons in the land.

All this a Court may rule out, "scratch out," if you please, as having no bearing and no truth in the interpretation of a canon.

If there be envy, hatred, malice, enough to instigate the prosecution, there will be energy enough to discard all argument and all precedent, for the gratification of the purpose and the parties in the particular case selected.

And the man offending, though as young as the first martyr, or such an one as Paul the aged, must be sacrificed, that the Sanhedrim of the Pharisees, and Diana of the Ephesians may live.

Gentlemen, I boldly ask, were the canons of the Protestant Episcopal Church prepared to legalize and justify oppression like this?

And will any court or bishop acknowledge themselves, prejudiced, powerless, unprincipled enough to carry it out?

There is no alternative, if the principle of territorial interpretation of this canon, for which these *men* Stubbs and Boggs contend, is to be established as the law of this Church.

And the number, the times, and the persons involved in the prosecutions to be thus inaugurated and pursued, can only be determined by the number of Stubbses and Boggses that may be found in the Church, and the number of bishops willing to help them, or too feeble to forbid them in their nefarious attempts.

If such is to be the administration of law in the Protestant Episcopal Church in the United States, its glory has departed, its peace has gone forever, and its existence in a land of freedom ought soon to follow them.

I humbly trust that we have not arrived at an age so dark and low as this, notwithstanding the dense ignorance covering those who can not see in the view of the learned counsel for the prosecution, that the Gospel of Jesus teaches prayers for the dead, or the "mysteriousness of the healing power in the garments of the Saviour, transmitted some sense to the garments of His church."

I trust that this respected Court will not allow itself, on this first trial of this great question in the whole history of our Church in the United States, to sink in such an abyss of confusion, its own honor, its own integrity, its own future usefulness and respectability, personal and collective, together with the reputation and prosperity of the Church whom they represent.

But we have by no means exhausted the difficulties of this territorial interpretation. The practical application of this interpretation to cities and towns in which there are several churches, has been shown to be so encompassed with difficulties, and will inevitably contend with so much power in opposition, that probably it may rarely be attempted in such populous scenes.

But the provision is said to be for the protection of smaller parishes in the country, from an intrusion and interference which a less commanding personal ministry may more reasonably dread.

It would be a poor principle of government, indeed, that laws are only to be executed where there is no resistance or difficulty to be feared in their execution — a cobweb in which little flies may be caught while stronger ones break through.

But I apprehend this territorial interpretation will meet with even more difficulty in its application to rural than to city parishes. The inhabitants of rural parishes have far less opportunity to enjoy a variety of pulpit instruction, and habitually value it more highly than the residents of cities. To allow a minister at his own will to

spread his autocracy over a whole village, town, township, or borough, and to declare that no one shall preach in it without his consent, however inferior or unprepared he may be, is beyond all question an assumption which the people of this country are but little ready to allow. It is the experience of men that the less able one is in actual personal attainments, the more assuming he may often be in the arrogance of his official claims. Exclusive demands are more likely to be met with in feeble minds, than in well instructed and enlightened ones. There will always be found the Stubbses and Boggses, in the Church, who imagine, like Simeon Stylites, that true personal greatness and renown is to be imparted by the height of the pillar to which they may climb. These are the men who value their own imagined rights far higher than the reputations of their brethren, and the pride of their own assumptions beyond the peace of the Church. But the inhabitants of rural parishes are often the most intelligent and educated of the members of the Church, and are always the least likely to submit calmly to mere pretensions to authority.

The burden upon public sentiment, and the dishonor of the Church in the urging of such claims, become even more apparent and intolerable in proportion to the inferiority of the instrument who inflicts the evil, and the greater comparative local importance of the event. The difficulty of intrusting this territorial power to the possible narrow and undiscerning minds of young and rural ministers, and of suffering the whole harmony of the Church to be sacrificed to the petty pride or peevishness of some individual, obscure and irresponsible, is a far greater evil, in the very proportion to the narrowness of the interest involved, and the unnecessary aspect of its endurance.

But this is by no means the only or the chief consideration in the connection of this claim with rural parishes.

In the present habits of society, our city churches are, to a large degree, emptied of their occupants in the months of summer.

Multitudes of city families are dwelling in rural homes, or sojourning in public rural scenes. These are for months under a different ministry from the pastors of their city homes. What then? Have they changed their actual pastoral relations? They can belong but to one church. In that, their "church-membership," in the language of the canon, is registered. Of that they are the permanent, abiding members, till this register is changed at their request. But this annual migration is so numerous and so extensive, that a city pastor may find a hundred or more of the families belonging to his charge in half as many country parishes, more or less remote. Are they not still his parishioners, and within his parochial cure? Has he not the indisputable right to follow them and minister to them, whithersoever they shall go? Or is he liable to presentment and trial, at the will

or whim of some rural minister, who may possibly attain renown or gratify hostility by prohibiting and insulting him?

This is a most important question indeed. It simply asks whether appointed pastors shall be violently separated from ministering to their own parishioners, according to their duty, the will of God, and the order of the Church, by the unreasonable and headstrong will of some other man. It is a monstrous pretension, indeed, that a temporary dwelling in a country parish, for health or social recreation, may thus imprison, involuntarily, a member of this Church, under the oppressive and impertinent power of some minister entirely unwelcome and disagreeable. And this member of the Church must sicken and die alone, because refusing to receive a strange ministration, and having the desired ministration of a pastor, known, chosen, and beloved, absolutely shut out from his appointed and desired duty by the arbitrary and uncontrollable will of hostile and unreasonable men. Yet this possible oppression arises immediately from the territorial interpretation of this canon; and it demonstrates it to be a principle as opposed to reason and to Christian propriety, as it is to the authoritative interpretation of the law by the law itself.

Its establishment as law will not be allowed, and could not be enforced. No human power but that of overwhelming force could be adequate to prevent a faithful pastor from following his sick and dying parishioners wherever they might be, and whoever might forbid. And this review of the violent and unreasonable operation of this assumed principle of interpretation shows that it could never have been designed in the calm wisdom of the Church, as the law which should govern and direct its ministers and members, in the great interests of the Gospel and the souls of men.

No number of presentments, trials, or penalties could make a principle so palpably unreasonable and unjust, a law upon the consciences of intelligent and God-fearing men, or acceptable to a Christian and Protestant church. The interpretation of the law assumed in this presentment, has been superficially taken as the law of the Church, because the actual meaning and bearings of this law, have not been carefully investigated, or the just application of its principles understood. For the first time in the history of the Protestant Episcopal Church in the United States, have the questions created under this careless interpretation been forced to a public trial.

This reverend Court has the honor of being the first tribunal created for the adjudication of the reach and application of this canon.

I hope their intelligence, fidelity, and impartiality may yet be completely vindicated, and their own reputation honored by the wisdom and justice of the decision which they shall make. But I well know, and I do not for a moment forget, that in a free and ordered church,

and in a free and intelligent nation, there is beyond, and ever above them, a tribunal of public sentiment, which must examine their decision, and which will rarely err in the final vindication of its own accuracy and authority.

May it please the Court, if I have succeeded in transferring my own convictions to the minds of others, in my previous argument, I shall need to occupy but little time in that which remains.

I claim, with great respect, to have demonstrated that preaching the Gospel and reading the prayers of the Church are not such an offense, as can, in any sense or under any circumstances, be entitled a *misdemeanor*, or "conduct disgraceful to the office of the ministry," and therefore are not such an offense as can, under any common circumstances, or any that have been alleged in this trial, be brought under the provided action of canon 3, section 1, title 2, of the canons of the General Convention; and that, therefore, the "notice" from the Bishop of New-Jersey had no legal status with the authorities of this diocese, and should have been rejected as inapplicable on that ground.

I claim to have demonstrated that, even if this canon could have been adduced in a just application to the offense charged upon the respondent, the failure of the Bishop of New-Jersey to comply with the prescribed language of the canon, and his mutilating its expressions to meet this case, made his "notice" an uncanonical and false one, which should have been rejected by the ecclesiastical authority of the Diocese of New-York, upon the basis of this inconformity to the express provisions of the canon.

I claim to have demonstrated that the terms "parish, parochial cure, and congregation," employed in canon 12, section 6, title 1, under which section and canon the charges of this presentment have been brought against the respondent, have not received in the habitual language of the Church a territorial, but a personal interpretation, and can not, therefore, be applied to the present case.

That a territorial interpretation is not consistent with the language of the canon itself, while a personal interpretation is entirely so.

That a territorial interpretation is entirely inconsistent with the whole practice and usage of this Church.

That a territorial interpretation interposes difficulties and impediments, which make it impossible that the canon should be so interpreted, or if so interpreted, shall ever be obeyed in the practical ministry of the clergy of the Church.

That the complainants in this case had no authority over the territory or place in which the respondent is said to have officiated; and therefore had no legal right to prohibit such officiating, or to claim the legal obligation of the respondent, to ask their express permission for such officiating.

That therefore, the respondent has committed no offense against the canon, in the officiating which has been charged upon him as his offense in this presentment; and is entitled to his discharge, upon the failure of all proof that, in the language of the canon, he did "officiate by preaching and reading prayers in the parish, or within the parochial cure of the Rev. Alfred Stubbs, D.D., and the Rev. Edward B. Boggs, D.D., without their express permission previously received for that purpose."

Having accomplished this argument, I feel that I need say little more, and yet I proposed to consider also the meaning of the term "officiate" in the canon which has been made the basis of this charge. I am unable to allow that such occupations or services as have been charged upon the respondent are really "officiating" as described in the language of this canon.

May it please the Court, having definitely settled that the parish of a clergyman is the public edifices of his church or congregations, and the dwellings of his parishioners wherever they may abide, I have submitted to the Court that it is the prohibition of an intrusion or interference among the actual people or congregation under his appointed charge which the clergyman desires, and which the Church secures to him. It is the personal alienation of them, the people, that he has reason to fear and desires to prevent. And it is against such interference that the Church in this canon designs to protect him.

The counsel for the prosecution has answered to this interpretation that the power of the civil law protects him in his church edifice, and that, therefore, the authority of the Church need not be, and is not, exercised over that. This assertion seemed to me, with great respect, but one of the shifts to which this learned counsel has been driven, in the consciousness that he really had no case, and could not maintain the prosecution in a straightforward and upright way.

Has this Church indeed no authority over church buildings because the civil law protects them? The canons of the Church are not designed to protect material interests, and can not be brought into that dominion. We are to "render unto Cæsar the things which be Cæsar's; and unto God the things which are God's."

The Church may forbid, and has forbidden all clergymen of this Church from officiating in the churches or among the families of the congregations of other clergymen without their consent or permission. And it is a most valuable and important law—no clergyman of this Church can desire to break it—no clergyman can be permitted to break it. It is for the interest and comfort of every clergyman to maintain it. The peace and harmony, the prosperity and success of the Church depend upon its maintenance.

The undisturbed and protected unity of a pastor and his congre-

gation is of inestimable importance. It is of universal importance. To secure and maintain it is no High Church or Low Church scheme.

But it can not be maintained upon a territorial interpretation of a parish. The erecting of the wall of China around a parish might have answered in the barbarous warfare of the earlier earth, but would be a poor guardianship of the moral influences and relations of the land and the day in which we live.

What the Church would prevent, and means to prevent, is personal undermining influence among a people. And if the complainants in this case could succeed in controlling the whole landed territory of New-Brunswick, they can not thus shut out the influence they have to dread.

Another clergyman may still fix his abode in New-Brunswick, and succed in a moral separation of the whole congregation of Christ Church from Dr. Stubbs, perhaps not even Mr. Hoffman the senior warden excepted.

The law of the Church forbids the clergy to do this; and because it can not reach the private influence and homes of every family, it lays its hand upon the conscience of the clergy, in all the language of prohibition which it could devise, to prevent this influence for evil; not proscribing earthly territory, which would be absurd and ineffectual, but proscribing that higher moral and intellectual territory, which is mapped out in the minds and associations of the congregation committed to a minister's charge, whether assembled in the church which is their place of central meeting, or dwelling separately in their own abodes.

And to the canon, in this relation, every upright and pure-minded clergyman of the Church will scrupulously conform. And the counsel for the prosecution did himself honor when he said that, worshipping in a church under a Low Church minister in his summer country residence, nothing could induce him to attempt or encourage an interference with his ministry.

I am thankful to second his assertion, that, reversing the relations precisely, such has been my conscientious and scrupulous practice in my summer country home.

Every clergyman of the Church is to be protected in the peaceful discharge of his own duties in his own congregation, according to his conscience and their wish. And therefore it is that I feel myself unable to unite in the uncanonical complaints and attempts to restrain, by force of authority, some extreme interpretations of Church right and observance in another conspicuous instance, which have been several times referred to in this cause in the arguments of both sides.

If I have a passion, it is for liberty, religious liberty, freedom of the spirit, and freedom of action. "Where the spirit of the Lord is,

there is liberty." I care comparatively little for an enforced unity. I can say, with the learned counsel, that "my heart throbs for unity upon the creed of Nice." But I can say, with more intense feeling, my heart throbs with desire to "proclaim liberty through all the land to all the inhabitants thereof," "in the unity of the Spirit, and the bond of peace."

And if my learned friend can find it in his heart to forgive my beloved and revered friend Dr. Muhlenberg for all the freedoms which he claimed in his testimony, I should hope he would not so corrugate the elastic power of his charity as to refuse to ask that "the recording angel might drop his tear" also upon us all.

In the interpretation which I have given to the canon defining "parish and parochial cure," I am far from being alone. The learned Dr. Seabury, in a report from a committee on this subject, of this very canon and section, to the New-York Convention of 1862, says:

"In our country, where the Church is dissevered from the State, and her presbyters are, for the most part, united to the people by permanent ties, which are formed with the consent of the bishops and with which the bishops do not pretend to interfere, it should be no matter of surprise that the word *parish* is used in a different sense. It does *not* mean, we suppose, either a territorial district or the people, be they churchmen or not, comprised in that district. Neither does it mean an association, incorporated or otherwise, which has not the right to put itself permanently under the charge of a clergyman of its own choice, but is dependent for ministerial services on the immediate direction of the bishop. In the canon under consideration, the word *parish*, as it seems to your committee, is *not* used in either of these senses, but is used to denote an association of persons, who are under the spiritual charge of a clergyman, set over them with their own consent, within a compass of indefinite limits, and who are accustomed to receive his public ministrations in a particular church. The government of this association, or of the persons composing it, agreeably to Scripture and the canons of the Church, is the *charge* or *cure* of the parochial clergyman, a charge extending over an indefinite number of persons, residing at greater or less distance from one another and from the spot where they are accustomed to meet for public worship." . . .

And again: "It appears, we think, that a *parish* or *parochial* cure, in the intention of the canon, was not a district nor a charge bounded by local limits, but a spiritual charge over persons accustomed, indeed, to assemble in one or more buildings, but yet scattered over an indefinite space."

And further: "We may admit, also, that the place which was the sphere of the clergyman's operations was in a vague and improper

sense regarded as his parish. But we see no proof that the canon intended a parish, in the proper sense of the word, to be an association of persons, under the charge of a clergyman, within a definite and not an indefinite compass."

To the same convention Judge Hoffman presented another report, on the same canon, in which he says: "Wheresoever, locally speaking, a member of a congregation resides, he is within the parochial cure of his own minister. The latter does not trespass upon the rights of another if he ministers to him within the fixed territorial limits of another's parish; and such other necessarily becomes excluded from such ministrations without the assent of the former."

This is language from these two eminent writers, of great authority; and I confess myself startled with some degree of amazement when the learned counsel for the prosecution, who is a legal member of the standing committee of this diocese, expressed his surprise at my stating such principles on my personal examination in this trial, when they were supported by such authority.

May it please the Court, when I have, in my own investigations, arrived at principles of ecclesiastical law which are so strongly supported by writers of such learning and wisdom in Church law as the Rev. Samuel Seabury, D.D., and the Hon. Murray Hoffman, my mind settles down in the conclusion with great quietness that whoever opposes me I must be right. I therefore assume, as demonstrated beyond any rational dispute, that, in using the terms "parish" and "parochial cure," the Church and the canon mean "a collection of living persons, and not an extent of earthly territory." And this conclusion indisputably involves the absolute innocence of the respondent of all offense against this canon under the charges of this presentment.

Within this parish or parochial cure, thus described, it is declared "no minister shall 'officiate' unless he has received express permission for that purpose from the minister whose cure may be the one herein involved."

But what is the meaning of "officiate"? "No minister belonging to this Church shall 'officiate.'" I answer, to officiate is to perform regular official services, to exercise the duties of an officer. Webster says, "To act as an officer in his office, to transact the appropriate business of an office or public trust, to perform the appropriate official duties of another."

These definitions may be easily illustrated and applied. To "officiate" as a commander in an army, or as the captain of a ship, or as a judge upon the bench, is to undertake and discharge the duties appropriate to such an official post. To "officiate" as a minister of the Protestant Episcopal Church is to undertake and perform the prescribed and regular duties of that office and station.

The same canon—canon 12, title 1, section 2—says, "No minister shall *officiate* as the rector or minister of any parish or congregation until he shall have received a certificate," in this section particularly described. To "officiate" is here, in its defined use, to undertake and perform the appointed official duties of the rector or minister of a parish.

Section 6: "If any minister of the Church neglect to *perform the regular services in his congregation*, and refuse his consent to any other minister of the Church to *officiate* within his cure."

To *officiate* here is "to perform the regular services of the congregation."

The term is employed also to describe an occasional, perhaps a single, instance of such a ministering.

Canon 11, title 1, section 1: "No person shall be permitted to *officiate* in any congregation of this Church without first producing the evidence of his being a minister thereof to the minister."

This may, perhaps, describe an occasional service, but it is in the same regular line of interpretation. It is undertaking to discharge the official duties of a minister of this Church.

Section 2, of the same canon: "No minister shall '*officiate*' transiently in a vacant parish, or in one the rector or minister of which is sick or absent, unless the wardens or vestry are satisfied he is at the time a minister in good and regular standing."

I need not produce other instances of the employment of the term. These are enough to show the habitual meaning intended to be attached to the word in its legal use. It is the undertaking to discharge any of the appointed official duties of a minister of the Protestant Episcopal Church.

The same meaning indubitably appertains to the word in the section of the canon under consideration: "No minister belonging to this Church shall *officiate* by preaching, reading prayer, or otherwise," etc.

The word "otherwise" is doubtless intended to include all other really official duties besides preaching and reading prayers, such as marriage, baptism, funerals, official visitation of the sick. But they are all to be "official duties or services" in the language and description of our law. They are duties directly official or professional, as they may be called; an undertaking of such services as are prescribed by this Church in any of its laws as the official duties of the ministry of the Protestant Episcopal Church.

Such duties shall not be undertaken or assumed in any church or other public edifice belonging to a congregation of this Church, or in the dwellings of any of the parishioners of any such church, "in the parish or within the parochial cure of another clergyman by any

minister of this Church, unless he have received express permission for that purpose from the minister of the parish," if there is but one, or the assent of a majority, if there be more than one.

With the impossibility and absurdity of the last provision in practical use I am not concerned. This is the law. But this has no defined territorial application. It refers to persons, and to persons alone among whom the officiating is assumed. No man probably is so insane and ridiculous as to affirm that no minister of this Church is permitted by this canon to read prayers or a sermon aloud to a single person in his own chamber in New-Brunswick without the permission of these *men*, Stubbs and Boggs.

It is only when the preaching and reading are assumed and performed as an express official function of the minister of the Protestant Episcopal Church that they are prohibited, and that only when assumed among a people described as "a parish or a parochial cure of another clergyman."

The manifest purpose of the prohibition is to protect and preserve the peaceful and edifying discharge of the local ministry, and the peace and unity of the parish referred to.

The object of such "officiating" without the permission of the minister of the parish is presumed to be the creation of a division among the people, the unsettling of a parish, the attempt to separate a portion for another congregation. Official services for such purpose in any parish or church without permission are justly prohibited.

This is the act here forbidden by this canon, and a minister charged with violating this canon must be proved to have undertaken and assumed such official services and duties.

This has been the unquestionable and habitual interpretation of this canon in the whole usage of this Protestant Episcopal Church.

In the case which has been before us here, the clergyman accused should have been proved to have undertaken and assumed such official services in the parishes and parochial cures of these complainants, Stubbs and Boggs.

But, may it please the Court, not an attempt has been made to produce such testimony in this Court.

The fact alleged and proved as the actual offense of the respondent is, that he preached and read prayers on the 14th day of July, 1867, in a Methodist congregation or "society," and in a Methodist church or "meeting-house," in the city of New-Brunswick.

And, indeed, great stress was laid by the counsel for the prosecution, in the evidence produced that he did so read "prayers," that is, the regular morning and evening prayers of the Protestant Episcopal Church, upon the fact stated by three witnesses that he did *not* do so; but that he read something else in the place of them, and, there-

fore, did not so "officiate." And witnesses went so far, in their direct examination, as to refuse to affirm that he even "preached" in a regular way, excluding this "officiating" also.

But, may it please the Court, is it to be conceded that religious addresses in Methodist "meetings" or "societies" is a discharge of the official duties, or an appointed and prescribed "officiating" of a clergyman of the Protestant Episcopal Church?

I trust this Court will not adopt an irregularity like this in their sustaining such a decision.

I trust they are too intelligent, and too well taught in the history and requirements of "the Church," to say that John Wesley and George Whitefield were duly "officiating" as regular ministers of the Established Church of England when they compassed sea and land with their alleged "irregularities," and inaugurated that which some have called the most fearful "schism" in the modern history of the Church of Christ, and as, perhaps, my friends on the other side would still feel bound to call it.

No, gentlemen, I hold that such irregular services are not "officiating," in the high and legal sense of the term which describes the appointed and important duties of the ministers of the Protestant Episcopal Church in the United States.

A minister of this Church may perform many just and religious services, highly appropriate to the business of his office, without officially performing them.

The respondent in this case might have held a religious conversation with some friend in New-Brunswick, blessed of God to the salvation of his soul. He might have conducted the family worship at his friend's house, not as a layman, but because he was a minister.

Will it be maintained that all these and kindred services are to be included in the "officiating otherwise" than by preaching or reading prayers?

Do these *men*, Stubbs and Boggs, mean to say that no minister of this Church shall converse religiously in New-Brunswick without their express permission?

I may well appeal, in the strong language of the learned counsel, "What do these men mean? Do they know what they mean?"

Yet it is a great mercy to the cause of Christian liberty in New-Jersey that Dr. Stubbs has not added this also to his protest, sent to Mr. Meyer's croquet-ground by his sage and satisfactory friend, Mr. Howell:

"I am Sir Oracle, when I ope my mouth, let no dog bark."

The letters referred to in this trial, from Dr. McClintock, by the counsel, I am informed, included a proposal or request, in some shape, to Bishop Odenheimer to appoint an Episcopal clergyman to officiate

in this Methodist Church of St. James, which request, referred by the Bishop to Stubbs, was by him refused. But for Dr. Stubbs, then, this painful schism, as it is esteemed, might have been healed, and the "finest church edifice in the State" of New-Jersey might have been added to the Episcopal churches of New-Brunswick.

If this be true, Stubbs has more to answer for than keeping Mr. Meyer a Methodist until he met with the ministry of the respondent.

May it please the Court, this respondent might have delivered more public addresses than I have described, in New-Brunswick, to assemblies gathered for religious purposes, for camp-meetings, if you please, for religious societies of various kinds. These might all be appropriate to his religious character, and by no means "disgraceful to his office" as a minister. But assuredly they were not, and could not be, called "officiating" or "official acts"—acts peculiarly belonging to his ministry, in the language of this canon.

The Church can not descend to such trifling impertinence as to forbid such or kindred acts of religious usefulness to her ministers as shall seem to them expedient or useful. But certainly she can not, will not, thus spread over these or kindred actions, however religious and useful, the sanction of an authoritative interpretation, which shall define all such proceedings, and whatever else may be possibly included within the word "otherwise" in this canon, as the proper "officiating" of a minister of the Protestant Episcopal Church, and a part of his prescribed and necessary duties. In this conclusion, as the only reasonable and just view of the law in this case, I feel satisfied I may rest, as the determined authority of the Church, and I have the right to anticipate for it the adoption and indorsement of the action of this Court, in a just decision of this case.

I conceive, therefore, I may rightly and fairly assume, in the application of these principles to the present case, to have demonstrated:

First. That the act charged upon the respondent in the complaint of this presentment was in no legal sense "officiating," according to the meaning, purpose, and intent of this canon. It was not discharging, nor affecting to discharge, "the regular services in a congregation of this Church." It was not the assumption or the attempt to "officiate as the rector or minister of any parish or congregation in this Church," which are the two definitions of "officiating" in the language of this canon.

Second. That the place in which this act is said to have been performed was not "in the parish or within the parochial cure" of either of these complainants singly, or of both in partnership.

It was not in the place of the regular assembling of "the church or congregations" of either of these complainants, nor was it in the residence or dwelling-place of any of their "parishioners;" neither of

them claiming, or ever having claimed, so far as appears before this Court, any official right or authority in or over the Methodist church, "society" or "meeting-house," alleged in their complaint and testimony, as the designated place of the offense charged upon the accused in this presentment.

I demand, therefore, how can any just or impartial Court consider the arguments thus presented in this defense, and resist the conclusion of the right of the accused to his discharge? And I claim from this reverend Court, upon the boldest ground of justice, the absolute and entire acquittal of the respondent from every charge of canonical offense which has been laid against him in this presentment, as perfectly innocent and free from blame in the premises here exhibited.

And here I should be glad to conclude all that it would be my duty to say upon this subject. But the counsel for the prosecution has seen fit to depart greatly from that line of mere official duty in argument—to which he declared his purpose to confine himself—and to condescend to other and personal asseverations, solely, it would appear, for the purpose of publicly degrading the respondent by ridicule, and for an appeal, both to this Court and to the outside public, to treat his whole condition and claims with contempt and reproach.

This is but in the line of that bitter, causeless personal hostility which has characterized this whole proceeding, and, I am sorry to say, seems to have imparted its acerbity to every one engaged in the prosecution.

He deliberately charges the witnesses for the respondent with falsehood—with "flinching from the facts," with "testifying uncandidly." They were solemnly pledged to tell "the truth, the whole truth, and nothing but the truth," so far as they know and believe. The other witnesses I need not defend from such aspersions by any man who is coarse enough to make them. I shall say for myself, in reviewing my whole personal testimony, I solemnly reaffirm its entire truth.

It is the indubitable truth of that testimony which makes the crime of this prosecution. I may challenge the whole observation of the Church to contradict it.

The Bishops of New-Jersey and of New-York, probably, would be found, in any just investigation, as guilty of the violation of this alleged canon as this respondent. So would the complainants in this case, the presbyters presenting, and every member of this Court. They are not peculiar in this violation; but they are peculiar in this persecution. The canon has never been enforced as the rule of our ministry. It never can be. It is impossible to bring it into any minute and absolute application. And every attempt at expounding it by the prosecution, in this trial, has been attended with the compulsory

effort to excuse certain violations of it, with which all are chargeable, as inevitable, that peculiar odium might be brought upon this defendant. Never on earth was there a combined will and purpose of interpretation more unjust.

Why, then, is this young man selected as the first public victim for this combined persecution, when every clergyman around him is as guilty as he?

I answer, in the face of this community, because he was young, and it was thought he could be safely handled, and others could be effectually reached through him; because he was, to a degree, influential, and it was important that he should be crushed.

It is not *he* that has been really tried, but that which the learned counsel has been pleased to call "the Puritan party" in him.

The Puritan party! I can only say, personally, in his paternal stock there was never a Puritan, from the Reformation to his generation. It is not that I should feel the name of Puritan a dishonor. They were a noble race. Well would it have been for the Church of England to have retained, with honor, the faithful men whom, under this opprobrious title, they persecuted and reviled. But from my soul I despise a set of men who come into the Episcopal Church—from the Quakers, Presbyterians, and every class of surrounding Christians—are welcomed and exalted as rulers in this Church, and then turn round with a contemptuous sneer, and speak of the "*sects*, the *meeting-houses*, the *societies*, the *schisms*," they have just left, in which their fathers and mothers lived and died, and from the worst sectarian spirit of which they themselves have never been released.

There is no wiser admonition of the Scriptures than that of Paul to Timothy, "Not a novice, lest, being lifted up with pride, he fall into condemnation." The great body of the bitterness, exclusiveness, hostility to other Christians, which disgraces the Episcopal Church this day, is to be found among that class of men who have thus joined this Church at their maturity, and are the real representatives of that party of which the learned counsel has said, "They are never satisfied unless they can make or break."

The learned counsel has asked, "Why are men at strife with each other because some think they can do this same work that all are pledged to do in a way which they deem more effectual than another? All have full liberty to work in their own way."

I may well ask his question in return, Why are they? But because you have chosen to institute this authoritative persecution, and to prohibit a liberty which was never challenged by authority before.

Your "Articles of Religion" are trodden under foot by men who teach every aspect of Popish doctrine in your Church except the personal authority of the Pope. Your Bishop goes with his official

sanction among the extremest shapes of Popish ceremonies, against which this Church has always delivered a faithful testimony. The whole general aspect in public worship, in many of your leading churches of this city, has been changed within the few years past, so that Hobart returning, would have to inquire in vain, in Trinity and its chapels, for the old paths in which he walked, and left others walking. We have not attempted to resist or restrain this liberty which has been claimed. It is not we who have organized a strife. We are the objects, the victims of a persecution, an oppression, which intends to do by ecclesiastical power—the resort of the violent and intellectually weak—what arguments and influence were found incompetent to do. Perhaps the little finger of the son may be thicker than the loins of the father. We may be called to much contention, it may be to much suffering.

But we adopt this counsel's words, "We do not mean to be driven off. They claim their rights in this Church, and we claim ours. When I say 'we,' I do not speak—I have no right to speak—for any one connected with this case. I speak of the school of opinion in the Church—the party in the Church, if you choose—with whom I sympathize, and I say that we do not mean to be driven off."

He says, "All have full liberty to work in their own way."

I retort his own words, with entire satisfaction, in reply, "I ask nothing better than that. Why will they not live up to it? Why preach forever, and never practice?"

Whose liberty have we attempted to restrain? Whom have we persecuted? We have no desire to persecute. We have no wish to restrain a fair and comprehensive liberty. The usages of the Church, as uniformly illustrated in our history as a Church—"*Ubique, semper, ab omnibus*"—we are contented to abide with. We introduce no novelties. We make no threats. We have submitted to acts of personal injustice before. We have been taunted, reviled in your Church papers, because we have submitted. We are still ready to adopt the counsel's closing words: "We have a right to hold the faith of the Apostles and of the early fathers prior to the division of the Church, and we can not be driven out because we hold that faith. We are ready to join hands with all, to spread the truth of the Gospel, and to defend its claims against error of all kinds; and, above all, to carry forward the banner of the Church against the impiety, the wickedness, the indifference, the perplexity, the scientific falsehood of the day against all enemies of the Church's faith throughout this land."

What have we ever asked more than this? We ask no more now. But if, at the end of near half a century's ministry of liberty, the whole of it under professedly High Church bishops, I am now to see a system of bitter persecution inaugurated by episcopal authority,

I must meet the case the best way I can—in submission to God, and with peacefulness in the Church. But persecute as you may, nothing but the power of a resistless physical force shall ever drive me out of my father's Church, a Church in which I ministered before many of you were born, and from the scenes of which I must soon, according to the will of God, depart. I may say with Hooker, "I have lived to see this world made up of perturbations;" and I truly grieve to see the Episcopal Church, in this Diocese of New-York, dishonoring itself with the inauguration of a system of doctrinal, individual persecution, the whole effect of which must be to weaken its power, to overturn its respectability, to repel from it all who are not craven enough to submit to persecution, or bitter enough to delight in it; and to make the episcopal office and system, which ought to be an attraction and a home for the wandering and the peace-loving, a by-word of reproach to the ungodly, and an object of lamentation and rebuke to the good.

Yet just that will be the result, if this Court shall justify this persecution by its sentence, and the Bishop shall approve their action, and carry it out in a public rebuke of this respondent—a sentence intended only to degrade and injure him; to limit by law an unbroken Christian liberty of ministry in the past, and to exacerbate, by the language of bitter reproach, the whole body of clergy and laity in the Church who sympathize with this defendent, and believe him to be unjustly and unreasonably "persecuted of men."

DECISION AND SENTENCE OF THE COURT.

To the Right Rev. the Bishop of New-York:

The undersigned, as the presbyters selected by you, "to constitute a Court for the trial of the presentment made against the Rev. Stephen H. Tyng, Jr., rector of the Church of the Holy Trinity, New-York, for certain offenses alleged in a complaint preferred against him, from the Diocese of New-Jersey," having performed the duty to which you called them, hereby declare their decision on the charge contained in the said presentment.

The charge and specifications are as follows:

"*Charge.*—Violation of section 6, of canon 12, of title 1, of the digest of the canons for the government of the Protestant Episcopal Church in the United States of America, passed and adopted in General Convention, in Richmond, Virginia, October, 1859: by which section of the said canons it is provided that, 'No minister belonging to this Church shall officiate, either by preaching, reading prayers, or otherwise, in the parish, or within the parochial cure of another clergyman, unless he have received express permission for that purpose from the minister of the parish or cure, or in his absence, from the church-wardens and vestrymen, or trustees of the congregation, or a majority of them.'

"*Specification* 1.—In this, that the said the Rev. Stephen H. Tyng, Jr., did, on the morning of Sunday, the 14th day of July, 1867, within the corporate bounds of the city of New-Brunswick, in the Diocese of New-Jersey, which city then constituted the parochial cure of the Rev. Alfred Stubbs, D.D., and the Rev. Edward B. Boggs, D.D., ministers of the Protestant Episcopal Church, duly settled and in charge of congregations in said city, officiate by preaching and by reading prayers within the said parochial cure of the said the Rev. Alfred Stubbs, D.D., and of the said the Rev. Edward B. Boggs, D.D., without their permission, or the permission of either of them, or of the church-wardens and vestrymen, or trustees, of either of their congregations, or a majority of such church-wardens and vestrymen, or trustees.

"*Specification* 2.—In this, that the said the Rev. Stephen H. Tyng, Jr., did, in the evening of the day aforesaid, within the corporate bounds of the city aforesaid, officiate by preaching and by reading prayers within the said parochial cure of the said Alfred Stubbs and Edward B. Boggs, without their permission, or the per-

mission of either of them, or of the church-wardens and vestrymen, or trustees of either of their congregations, or a majority of such church-wardens and vestrymen or trustees."

It is proved by the testimony, as you will see in the evidence herewith delivered, that the Rev. Stephen H. Tyng, Jr., did, both on the morning and in the evening of Sunday, the 14th day of July, 1867, officiate by preaching and by reading prayers within the corporate bounds of the city of New-Brunswick, in the Diocese of New-Jersey.

It is also proved that the Rev. Alfred Stubbs, D.D., and the Rev. Edward B. Boggs, D.D., ministers of the Protestant Episcopal Church, were at that time duly settled and in charge of churches or congregations in said city, and that these were the only Protestant Episcopal congregations or churches within the corporate bounds of said city.

The Rev. Mr. Tyng officiated on both the afore-mentioned occasions without having received the "express permission" of either of the above-named ministers, or of the church-wardens and vestrymen, or trustees, or either of their congregations, or a majority of such church-wardens and vestrymen, or trustees.

These facts are fully established. The decision of this case, therefore, depends entirely on the interpretation to be put upon the section of the canon alleged to have been violated.

It is claimed on the part of the accused that the words "parish" and "parochial cure," in this section of the canon, can not properly be interpreted as meaning a territorial division, or locality defined by territorial boundaries or limits, but that they are to be taken as simply designating the people who actually attend the ministrations of a clergyman in his church edifice, or whose names the minister of such church shall have put on his list of families and adult persons, according to the requirement of the fifth section of canon 12, title 1.

The undersigned can not take this view of the canon now in question, for the simple reason that the canon itself plainly forbids it by going on to define its own meaning in the following clear and positive language:

"Where parish boundaries are not defined by law, or settled by diocesan authority under the second section of canon 5, of title 3 of this digest, or are not otherwise settled, they shall, *for the purposes of this section*, be defined by the civil divisions of the State as follows:

"Parochial boundaries shall be the limits, as now fixed by law, of any village, town, township, incorporated borough, city, or the limits of some division thereof, which may have been recognized by the bishop, acting with the advice and consent of the Standing Committee, as constituting the boundaries of a parish.

"If there be but one church or congregation within the limits of such village, town, township, borough, city, or such division of a city or town as herein provided, the same shall be deemed the parochial cure of the minister having charge thereof. *If there be two or more congregations or churches therein, it shall be deemed the cure of the ministers thereof, and the assent of a majority of such ministers shall be necessary.*"

It would be impossible to find language that could more clearly and distinctly declare that a minister's "parish" signifies not the *people* merely who worship in his church, or whose names are on his list, but the *division of territory* within which, as fixed by law or recognized by the bishop as above recited, his church or congregation is situated.

Within this territory, while our Church claims no jurisdiction over, and undertakes no legislation for bodies of professing Christians other than her own, yet in every place her own ministers are subject to her authority and amenable to her laws. Into whatsoever abode, into whatsoever house of worship, under whatsoever roof they may go, they are still ministers of the Protestant Episcopal Church, and as such, bound by her rule, and answerable to her constituted authorities.

Whatever doubt may have previously existed, if any doubt did exist upon this point, it was most certainly intended to be set at rest by the enactment of canon 7 of 1829, as is fully shown by the history of that canon, as related in "Hawks's Constitution and Canons of the Protestant Episcopal Church in the United States," pages 291 and 292. In the case there referred to, a minister of our Church claimed the right to address Presbyterians or Congregationalists in their own house of worship, against the remonstrance of the rector of the only Protestant Episcopal church in the place, on the ground that they were not within his "parochial cure." It was this circumstance which gave rise to the canon of 1829, making it still more clear, if possible, that the Church in this part of her legislation, intends by the terms "parish" or "parochial cure," a district or territory defined by local boundaries. It undoubtedly follows that no presence of a minister's parishioners within the parish or parochial cure of another, can give to that minister a canonical right to officiate therein, even for them, without the permission of the minister of that parish. There may be localities, as in large cities, where the observance of this rule might be impracticable; but in the Church at large it is not impracticable, nor, in the opinion of the undersigned, unnecessary.

This board of presbyters must take the law as they find it; and, so doing, they can not but regard the whole territory embraced within the corporate bounds of the city of New-Brunswick, in the Diocese

of New-Jersey, as the cure of the Rev. Dr. Stubbs, and the Rev. Dr. Boggs, who, at the time of the alleged violation of the canon, were the ministers of the only two Protestant Episcopal congregations or churches therein.

It is claimed, on the part of the accused in this case, that the object sought by the legislation of the Church, which led to the enactment of this canon, was solely to guard a clergyman in his charge from efforts to supplant him in the affections and respect of his people, through a spirit of injurious rivalry and unholy competition.

In the opinion of the undersigned, however, the intent of the canon, so far as it has any bearing of this sort, is not so much to *remedy* the michief which flows from an unholy spirit of rivalry, as to *prevent* it. Rivalry implies some degree of possession, some foothold already obtained, such at least as gives place and power for competition and strife for the object sought, or for emulation. But the evident purpose of the canon is to *prevent* the gaining of any such possession or foothold as would afford an *opportunity for rivalry*. The surest way to prevent rivalry would be to forbid *intrusion!* and this is precisely the point to which, in the opinion of the undersigned, according to the best knowledge they have been able to derive from a careful examination of the whole subject, the law of the Church is directed. Whatever may have been the condition or necessities of ministers or of parishes at the time when legislation upon this subject began in our branch of the Church in 1792, it is plain to them, as they think it must be to every unbiased person who will follow down the action of the Church with reference to this law, to the enactment of the present canon, that the whole purpose and intent have been to prevent intrusion altogether. It began by saying in general terms, (canon 6, 1792,) "No clergyman belonging to this Church, shall officiate either by preaching or reading prayers in the parish, or within the parochial cure of another clergyman, unless he have received express permission for that purpose from the minister of the parish or cure, or, in his absence, from the church-wardens, vestrymen, or trustees of the congregation." In the general convention of 1795, it was enacted (canon 7) that, "Whereas, there is no provision made in the 6th canon of 1792, for the case of such a vicinity of two or more churches, as that there can be no local boundaries drawn between their respective cures, it is hereby ordained that in every such case, no minister of this Church other than the parochial clergy of the said cures, shall preach within the *common limits* of the same, in any other place than in one of the churches thereof, without the consent of the major number of the parochial clergy of the said churches." Every revision of the canon from that day to this was simply aimed to declare and give effect to its original purpose by such further provisions as experience

and the expansion of the Church seemed to demand. Parish boundaries have been more accurately defined, and ministrations by another than the minister in charge have been more specifically prohibited, in order that every minister should have his proper sphere of labor, and be held accountable in that sphere; that so, each working with the consent of the rest, all might conspire together in unity of mind to promote the edification of the Church, and the glory of God.

It is not for this board of presbyters to enter into a defense of the wisdom and propriety of this legislation, or of the existing canon. With this, in the performance of their present duty, they have nothing to do. They may remark, however, that such legislation and such regulation are as old as the Church itself, based upon that principle of order and propriety which we find so distinctly enunciated by the great Apostle, St. Paul, in the 15th chapter of his epistle to the Romans, 20th and 21st verses: "Yea, so have I strived to preach the Gospel, not where Christ was named, lest I should build upon another man's foundation; but as it is written, To whom he was not spoken of they shall see: and they that have not heard shall understand."

Some of the witnesses, as will be found in the evidence which we herewith deliver to you, testified that in their own ministry and in that of other clergymen, so far as their observation has extended, the requirements of this canon have not been complied with, nor sought to be enforced.

In the present case, and in their present relation to this case, the undersigned do not see how this testimony, giving to it whatever weight may be claimed for it, can determine, or help to determine for them, either the meaning or the obligation of the canon. Surely the habitual or general ignorance or disregard of a law is not to be taken as settling its true interpretation. Nor can the number or respectability of those who set its requirements aside, render the breach of it less certain.

It is true that this canon is one of those enactments, an appeal to which should not be made without great and good reason. But it is to be presumed that he who does appeal to it has such reason. It is not likely that any three presbyters would be found willing to draw up and address to their bishop a presentment specifying as offenses acts which common sense and common courtesy would allow: and still less probable is it that the bishop would permit such a presentment to go to trial. And this is deemed by the undersigned a sufficient provision against any ridiculous or vexatious extreme into which a strict interpretation of this canon might be supposed to lead.

Still, however, while the undersigned, for the reasons above given, can not look upon the alleged disregard of this canon as fixing its true

interpretation, so as to put the present case beyond the scope of its intention, they are not unwilling to admit the fact of such disregard in mitigation of the offense committed in this case.

At the same time, it must not be forgotten that the act here complained of was done in open defiance of the episcopal authority of the Diocese of New-Jersey, and in face of a kind remonstrance. The undersigned, constituting the board of presbyters for the trial of the presentment made against the Rev. Stephen H. Tyng, Jr., Rector of the Church of the Holy Trinity, New-York, do therefore unanimously declare, that the said Stephen H. Tyng is guilty of the charge and specifications contained in the said presentment, and state *Admonition* as the sentence which, in their opinion, should be pronounced upon him.

In testimony whereof, the undersigned have hereunto set their hands this 24th day of February, in the year of our Lord one thousand eight hundred and sixty-eight.

(Signed) Alfred B. Beach, D.D.,
Isaac H. Tuttle, D.D.,
Eugene Augs. Hoffman, D.D.,
Samuel Hollingsworth,
W. H. Moore.

I hereby certify that the foregoing is a true copy of the decision of the Court.

(Signed) Alfred B. Beach,
Chairman.

APPEAL FROM COUNSEL FOR THE RESPONDENT.

To Right Rev. Horatio Potter, Bishop of New-York:

Dear Sir: In the case of the Rev. Stephen H. Tyng, Jr., the decision of the Board of Presbyters, before whom he was tried, having passed into your hands for final disposition, I beg leave to call your attention briefly to certain points which require your consideration.

You have before you the evidence taken by the Board, without the arguments which the respondent's counsel offered on the trial. Those arguments, taken down by stenographers, are in the printer's hands, and will soon appear in a full report of the trial. If final action on the case should be suspended until the printing is completed, those arguments at large will be laid before you; and I respectfully suggest that, in the work of examining the case, in order perfectly to understand it, and do justice to the accused, great assistance may be gained by their perusal.

The case, as it stands before you, presents two general questions: First, Has the respondent violated any canon of this Church? and Second, is he lawfully and regularly arraigned for such violation?

As to the first question. The allegation of the presentment is, in substance, that the respondent officiated, by reading prayers and preaching, within the parish of Dr. Stubbs and Dr. Boggs, without their express permission. It appears that the respondent did in fact read prayers and preach in a Methodist Episcopal church in one ward of the city of New-Brunswick, without the express permission of either Dr. Stubbs or Dr. Boggs, and that Dr. Stubbs then was rector of a Protestant Episcopal church in another ward of that city, and that Dr. Boggs was then rector of a Protestant Episcopal church in still another ward of that city, and that the city of New-Brunswick is divided into six wards, and contains about 15,000 inhabitants. It does not appear that any geographical boundaries of the parish of either Dr. Stubbs or Dr. Boggs have been established by law, or recognized by diocesan authority.

The Board of Presbyters have adopted the erroneous view of the presentors, that the joint parish of Dr. Stubbs and Dr. Boggs embraces the entire geographical area of the city of New-Brunswick, and is in no wise limited to the two Protestant Episcopal churches, the rectories and other premises thereof, and the dwellings and possessions of the people of their congregations, and does not even exclude public buildings, or the church edifices of other denominations within which Dr. Stubbs and Dr. Boggs have no right to exercise their min-

istry, without express permission of persons not belonging to their congregations, nor within their spiritual cure; and the Board wholly ignores the fact that "parish," "cure," and "parochial cure," in the laws of this Church, are the usual terms to express a portion or division of people, rather than an area or partition of land. If the entire territory of the city of New-Brunswick is the parish of those two rectors (as they claim it to be) then all the inhabitants of that city are their parishioners, and every family and person in New-Brunswick by canon 12, title 1, must be named and recorded by the rectors in their parish lists, and the rectors stand charged with the spiritual cure of numerous ministers and entire congregations of other denominations. But if canon 12, title 1, receive a fair and sensible interpretation, the terms "parish" and "parochial cure," there used, include neither those ministers nor those congregations, and the parish embraces and is limited to the people united under the ministry of Dr. Stubbs and Dr. Boggs, and the church edifices and property of the two Protestant Episcopal churches, and the dwellings and premises of those people, within the city of New-Brunswick. The extent of their parish, according to this canon, is bounded externally by the limits of the city, without absurdly including all the space within those limits. The limits of the city is the utmost exterior line to which their parish may extend, and it may in fact have a less extent. The administration of branches of civil government often embraces in terms the whole of a city or town, while in the nature of things, it reaches only parts of that area. For example, the regulation of roads and streets is committed to an official body for the whole town or city, yet the functions of that body are limited to the streets and roads within the city or town, and do not include the dwellings and fields of the inhabitants. There is one street commissioner for the whole city of New-York, and the map of his jurisdiction reaches to the out-bounds of the city; but the blocks of houses are not within his jurisdiction. In like manner, the parish of these two rectors is as wide as the city of New-Brunswick, in respect of its possible extent; but it in no sense includes those parts of the city which do not come within their ministry, and have no practical relations with it. The system of veins and arteries in a living body has for its bounds the surface of that body, but in no sense includes the bones and sinews. The hearers and worshippers of these rectors' cure may be like the vital arteries and veins of New-Brunswick; but the residue of the inhabitants, not being of their cure, may yet be like other integral parts of the living body. For aught I know, the parish of the Methodists in New-Brunswick, and the parishes there of the Presbyterians, and of the Reformed Church, and of the Roman Catholic Church, each may be defined by its proper canons as limited by the bounds of the city; yet no one of their ministers should assume

his own parish to embrace every thing within the city, including Dr. Stubbs, Dr. Boggs, and their churches, and the houses of their congregations. It is a cardinal rule, that the interpretation of a law must be sensible; in this case, the interpretation of the presentors is absurd.

The practical construction of the canon in question, by the common consent and action of the clergy, upon well-settled principles of interpretation, is of very great weight. Those, whose peculiar business and duty it is to understand the law of the Church, and conduct themselves accordingly, and whose purpose of conscientious compliance with their obligations must be recognized, are very high authority; and their treatment of any law of the Church, like the advice of learned jurists and the opinions of courts upon a matter of civil law, is one of the safest guides to the right understanding of the law itself. In the present case, six clergymen, of great experience, and high standing, have proved a usage of the clergy, "ancient, constant, and modern," in support of the view of the respondent; and not one witness, nor a particle of evidence to the contrary has been produced. The usage, therefore, for the purpose of this case, is incontestably established; and that usage maintains our interpretation. The Board of Presbyters, in their decision, assume to treat our witnesses as a set of law-breakers, and the usage, which their testimony establishes, as a general system of law-breaking. The clergy in general not being on trial in this case, the tribunal, with propriety, might have withheld such general condemnation; but inasmuch as this young clergyman seems to be thought worthy to be the first victim of a new, erroneous, and absurd interpretation of a canon, which is not newly enacted, but is now completing the 29th year of its existence, in the face of an established usage and construction of an opposite nature running through all that period, it was perhaps fitting that a whole generation of faithful ministers should participate in his reproach.

Upon the whole of the evidence now before you, I claim on behalf of the respondent that he can not legally be convicted of offending against any canon of this Church.

Your attention is now invited to the second question, namely, whether the respondent stands lawfully arraigned for a violation of the canons of this Church.

The canon 2, of title 2, describing all offenses for which a clergyman may be tried under any circumstances, and section 1, of canon 3, title 2, against misdemeanors committed in one diocese by any clergyman of another diocese, are distinct and widely different. Many things which would be offenses under the former, would not constitute a misdemeanor under the latter. Any violation of the rules of this Church, whether disgraceful to the clerical office or otherwise, is

an offense under the former; but to constitute a misdemeanor under the latter, there must exist a case of a clergyman conducting himself in a way contrary to the rules of this Church and also disgraceful to his office. An offense under the former section alone, committed in New-Jersey by a New-York clergyman, does not come within the jurisdiction of the Bishop of New-Jersey; whose authority over such clergyman is limited by the latter canon to misdemeanors disgraceful to his office. The present accusation came from the Bishop of New-Jersey, upon the complaint of two clergymen of New-Jersey, and was stated by both the accuser and complainants as a proceeding upon the latter canon. By the provisions of that canon, the accusation so made may be proceeded on in the Diocese of New-York; but if the accusation is not proceeded on in New-York within three months, it may be proceeded upon in New-Jersey. In case no proceedings had been taken by the Standing Committee of the Diocese of New-York, in your absence, during the three months, proceedings could have been had in New-Jersey; and it is perfectly clear that in such proceeding in New-Jersey, the respondent must have been presented for a misdemeanor disgraceful to his office, or not presented at all. When the Standing Committee of the Diocese of New-York took up the accusation forwarded from New-Jersey, they took it up as an accusation of a misdemeanor disgraceful to his office; when they sent it to the committee of five persons, they sent it as they received it, and could not make it a different thing; when the committee of five persons took up the accusation for inquiry, it was still the same accusation for a misdemeanor disgraceful to his office; and that committee had no power or color of authority to make presentment for any other thing. That committee was not charged with inquiring whether the respondent had committed any offense under canon 2, title 2, nor whether he had done any thing simply contrary to the rules of this Church; but was charged with the simple and single inquiry, whether he had committed a misdemeanor by conducting himself in a way contrary to the rules of this Church and disgraceful to his office. The functions of that committee are strictly defined by the law, and a presentment made by them, not authorized by their proper functions, is illegal, null, and void.

Look now at the presentment in this case. There is nothing in it about a misdemeanor; nothing in it about conducting himself in a manner disgraceful to his office; but a simple charge of an offense under a different canon. If the diocesan authorities of New-Jersey, by the lapse of three months without prosecution here, had acquired jurisdiction to prosecute the respondent, a presentment like the one in this case could not have been allowed, because it does not state a misdemeanor or any thing disgraceful to the office: and the same

presentment, now made here in pursuance of the original accusation, is equally unauthorized.

It was hardly suggested on the trial, that what Mr. Tyng did, was in fact disgraceful to his office; and it can not be maintained, with the slightest plausibiiity, that a presentment for a misdemeanor disgraceful to his office can be good, without a distinct allegation in it that what he did was disgraceful to his office. The canons of this diocese prescribe that the presentment must be in writing, and must specify the offense with reasonable certainty as to time, place, and circumstances; a judicious provision, conformable to the course of criminal law, and absolutely necessary to the doing of justice. This presentment by the committee of five, therefore, was wholly unwarranted. Being charged to inquire, whether Mr. Tyng was guilty in New-Jersey of a misdemeanor disgraceful to his office, they had no more right or authority to present him for an offense which is not charged as a misdemeanor, nor as disgraceful to his office, than they had to present him for not catechising the children in his own parish.

Nor can this presentment be sustained on the ground of being an original proceeding in the Diocese of New-York, independent of the accusation from New-Jersey. Every proceeding for the trial of a clergyman must come from one of three distinct sources specified in the canons. Those sources are, first, lay; second, clerical; and third, episcopal. The first is a presentment of a clergyman by members of his own vestry; the second is a presentment of a clergyman by three clergymen of his own diocese; the third, and last, is the presentment of a clergyman by his own bishop. This presentment was neither by Mr. Tyng's vestrymen, nor by three clergymen of his diocese. Was it a presentment by his own bishop? The canon provides for a presentment by the bishop through a committee of five, appointed by him, whenever the bishop has reason to believe that a clergyman is under the imputation of being guilty of offense or misconduct. In this case the Bishop of New-York personally had nothing to do with the whole matter until after the Committee were appointed; and the Standing Committee, which assumed his duty in his absence, had nothing before them, from public rumor or otherwise, except the New-Jersey accusation of a misdemeanor; and the committee likewise had neither any belief, or cause to believe, that Mr. Tyng was under the imputation of being guilty of any thing, from public rumor nor anyhow otherwise, except by the New-Jersey accusation of a misdemeanor. The powers of the Standing Committee, therefore, were strictly limited to appointing a committee of five, and laying before them the New-Jersey accusation. The Standing Committee accordingly simply appointed a committee of five to investigate that accusation. The powers of the committee of five were strictly confined

to that accusation, and their duty was either to present Mr. Tyng for that identical accusation, or not to present him at all. When they proceeded to present him for another offense, they overstepped the limits of their powers, and their action was wholly unauthorized, and the presentment void.

It is not strange, nor in the least a subject of criticism, that, when this presentment first came before you, stating an offense on its face, and no hearing took place at which counsel could have drawn your attention to the discrepancy between the accusation submitted to the committee and the presentment they had drawn up, the paper should have passed your hands without the fatal defect being noticed or observed. But when the matter was fully brought to the notice of the Board of Presbyters, they erred in disregarding it, and I now confidently appeal to you to correct their error, and dismiss the case.

In concluding this communication, allow me to hope that the case will be held under advisement until the arguments offered at the trial can be printed and placed in your hands. This prosecution involves not only the personal standing of the respondent, but much greater interests. A party in the Church attempts here to humble its opponents. Divisions among brethren are always to be regretted, and, although they can not be wholly prevented nor immediately healed, still they should be held in check by discouraging resorts to party prosecutions and attempts, by judicial punishments, to disgrace the opinions and outlaw the practice of a great body of faithful ministers; especially when the accusation on its line of progress from initiation to trial, in breach of established order, has been changed to improve the chances of a conviction.

With great respect, your obedient servant,

CHARLES TRACY,
Of Counsel for Respondent.

New-York, March 3, 1868.

BISHOP POTTER'S SENTENCE.

To The Rev. Stephen H. Tyng, Jr., Rector of the Church of the Holy Trinity, New-York:

My Reverend Brother: Having approved of the finding of the Board of Presbyters appointed to try the presentment against you, for certain acts done by you in the city of New-Brunswick, in the Diocese of New-Jersey, it becomes my duty, under the 17th canon of this Diocese, to pronounce the Canonical Sentence recommended by them; and in so doing, to summon the accused to meet me in some church designated by me, which shall, for that purpose, be open at the time of pronouncing the sentence.

I have therefore to request that you will meet me in the Church of the Transfiguration, in East Twenty-ninth street, in this city, on Saturday next, 14th day of March, at twelve o'clock, noon, for the purpose of hearing the sentence then to be pronounced.

Commending you to the divine guidance and blessing, I am your servant in the Lord,

Horatio Potter, Bishop of New-York.

New-York, 38 East Twenty-second Street,
March 11, 1868.

BISHOP POTTER'S ADMONITION.

The Board of Presbyters, appointed for the trial of the Rev. Stephen H. Tyng, Jr., having delivered to the Bishop of the diocese their decision on the charge contained in the presentment, together with the evidence, stating that the said Rev. Stephen H. Tyng, Jr., is guilty, and also stating that, in their opinion, the sentence of admonition should be pronounced; the Bishop, pursuant to the canon, summoned the accused and several of the clergy to meet him on Saturday, the fourteenth day of March, A.D. 1868, at noon, in the Church of the Transfiguration, in the city of New-York, and did then and there publicly pronounce the sentence aforesaid, as follows:

Stephen H. Tyng, Jr., Presbyter:

Reverend Brother in the Lord: We are here to-day in obedience to the law of the Church, for the performance of a painful duty.

It is to pronounce upon you the canonical sentence which has been recommended by the Board of Presbyters, duly appointed to

try the presentment found against you for certain acts of yours complained of in the diocese of New-Jersey.

It appears that on Sunday, the 14th day of July, 1867, you officiated, by preaching and reading prayers in the morning, and again in the evening, in a Methodist meeting-house in the city of New-Brunswick, in the diocese of New-Jersey; and that you did thus officiate, not only without the permission of the two presbyters whose joint cures, by the terms of the canon, included the whole of said city of New-Brunswick, but in defiance of their protest, and in disregard of the warning conveyed to you from the Bishop of the diocese. The complaint of the two presbyters of New-Brunswick having been laid before their Bishop, was by him duly forwarded to the ecclesiastical authority of this diocese, according to the provisions of the canon applicable to such cases.

The ecclesiastical authority of this diocese (being at that time, in the absence of the Bishop, the Standing Committee) appointed, according to the seventeenth canon of this diocese, a Committee of Inquiry, consisting of three clergymen and two laymen, to examine into the facts of the case.

The said Committee of Inquiry unanimously reported a presentment against you for a violation of section 6, of canon 13, title 1, of the canons of the General Convention. That presentment was allowed by the Standing Committee as the ecclesiastical authority for the time being; and twelve presbyters were named to you, that you might, if desirous to exercise the privilege, select the names of five presbyters to constitute the board for the trial of the presentment.

You having declined, after some delay, to exercise the privilege of selection, that duty was performed by the Bishop, who accordingly gave notice to five presbyters—presbyters who were among the most intelligent, calm, and dispassionate of their order in this diocese—that they were selected to constitute a board for the trial of the presentment found against you.

The Board discharged their duty with great patience, and with a fairness and judgment that will be generally recognized when the case comes to be fully understood. They allowed to you a large number of able counsel, and they listened with commendable forbearance to arguments and discussions which carried freedom of speech to its utmost limits, and left no form of appeal to popular prejudice and passion untried.

After careful consideration, the Board reported to us their conclusions, and the reasons for them—conclusions and reasons which we believe will commend themselves to the judgment and right feeling of the great body of the Church in this country.

They were unanimous in finding you guilty of the offense charged,

of violating the canon already referred to; and they were also unanimous in stating admonition as the sentence which, in their opinion, should be pronounced upon you. Having taken ample time for review and consideration, and allowed sufficient opportunity for further pleas in your behalf, and for the examination of them, we have now to express our approval of the finding of the Board of Trial: and we do here, in virtue of the authority conferred upon us by the great Head of the Church, and in accordance with the recommendation of the Board of Presbyters appointed by us, deliver to you this, our admonition, for the offense of which you have been found guilty by your brother presbyters: the offense of officiating, in violation of the law of this Church, within the joint parochial cure of two presbyters of a neighboring diocese, in opposition to their expressed wishes, and in disregard of the warning of the bishop of that diocese.

We have said that this is the performance of a painful duty. It is so, not because we deem the law of the Church which has been violated harsh or unreasonable; nor on account of any want of fairness or want of thoroughness in the proceedings which have resulted in this sad conclusion; but, because of the grief which we feel in finding ourselves constrained to utter words of censure where we would so gladly speak only in the voice of loving commendation. But in administering our weighty office, we are bound, no less than others, to be guided by the requirements of law, and we have to take heed that we do not allow feelings of tenderness for individuals to interfere with lawful and necessary measures for preserving the order and discipline of the Church.

We believe we do not exceed the limits of a widely-recognized truth, when we express our conviction that scarcely any bishop in this country has exercised in equal measure toward a presbyter the kindness, forbearance, and generosity which have been shown by the present Bishop of the diocese toward you, and toward those connected with you. In reviewing the past, we feel no regret that gentleness and kindness have been thus conspicuous in our bearing toward you. And while we are free to say that we do not mean to allow discipline in the Church in this diocese to perish through our own neglect, or through our tenderness toward individuals, yet we do mean to continue to make it our earnest endeavor, with humble prayer for the assistance of God's grace, to stand ever in a kindly, paternal relation to all our clergy; to keep out of our mind all bitterness of feeling, all undue harshness of judgment toward those who deal inconsiderately with the doctrines, or with the order and law, of this Church. We mean to distinguish, so far as may be possible, between the individual and his official acts; to make allowance for the erroneous views and wrong impulses which have resulted in part

from education and other partial influences; to cordially recognize every good quality and really useful service; thus keeping ourselves in a condition to be just in our judgments and kind in our personal feelings, in spite of all waywardness of individual tempers, but at the same time holding ourselves ready to be firm in the exercise of whatever discipline may be called for by the law of the Church, and rendered necessary for the maintenance of its order and well-being.

The interpretation of the canon under which the complaint was lodged against you in the diocese of New-Jersey, and under which, in this diocese, you have been presented, tried, and found guilty, has been with great vehemence disputed, but disputed, as we think, with very little reason. The Bishop of New-Jersey; the Standing Committee of this diocese, which, in the absence of the Bishop, received the complaint from New-Jersey, and acted upon it in the appointment of a Committee of Inquiry; the Committee of Inquiry itself, which unanimously presented you for the violation of that canon; and the Board of Presbyters appointed to try you, and which unanimously found you guilty, all concurred,—as it is believed that a very large portion of the whole Church in this country would concur—in the same plain and obvious interpretation. The history of the canon and its language, as well as the reason of the thing, make it clear that the Church designed, in section 6, canon 12, title 1, to confer upon rectors exclusive territorial jurisdiction, so far as might be necessary to protect them from intrusion and disturbance by other ministers of this Church. In all ages the Church has taken care to protect her ministers from unreasonable conflict and aggression; requiring that each pastor shall be left in quiet and security in the discharge of his ordinary duties in his own proper sphere. The canon just referred to provides "that no minister belonging to this Church shall officiate, either by preaching, reading prayers, or otherwise, in the parish, or within the parochial cure of another clergyman, unless he have received express permission for that purpose from the minister of the parish or cure, or, in his absence, from the church-wardens and vestrymen, or trustees of the congregation, or a majority of them." And it goes on to declare, (in reference to a previous paragraph in reference to parish boundaries and subdivisions of towns, etc.,) "that if there be but one church or congregation within the limits of such village, town, township, borough, city, or such division of a city or town as herein provided, the same shall be deemed the parochial cure of the minister having charge thereof. If there be two or more congregations or churches therein, it shall be deemed the cure of the ministers thereof, and the assent of the majority of such ministers shall be necessary."

Now, in the city of New-Brunswick, where the acts complained

of were done, there were two churches or congregations, and a minister in charge of each of them. By the terms of the canon, nothing can be more clear than that the city of New-Brunswick, for all the purposes of this canon, was the joint parochial cure of these two ministers, so that no clergyman of this Church could rightfully officiate in any part of that city without their consent. It is obvious, both from the terms of the canon and from the reason of the thing, that, if a clergyman of another place desired to officiate in one of the two parish churches in New-Brunswick, the assent of the minister of that church would be sufficient; but if he desired to officiate in some other place within the city of New-Brunswick, which was not one of the parish churches, nor an edifice especially appertaining to the charge of one of those ministers, but a place wholly unrecognized by this Church, then he must have the assent of both the ministers in that city. The canon law of this Church is for the ministers and people of this Church, and has no relation whatever to the ministers and people of other religious bodies. To say that the literal, natural, and usual interpretation of the canon in question, ascribing to the two ministers of this Church in New-Brunswick a jurisdiction over the whole of that city, for the purposes of the canon, is to claim for them an absolute jurisdiction over all the people and over all the religious houses of that city, is to say something so flagrantly unreasonable and unfounded that only persons who wish to be deceived can be deceived by it. As well might we say that the canon law of this diocese, because it extends over all the territory of this diocese, so far as the clergy and parishes of this Church are concerned, must, therefore, be considered as applicable to all the ministers and people of other religious bodies within the geographical limits of this diocese. Such a perversion of plain facts may possibly answer the purpose of an appeal to headlong popular prejudice and passion; but surely it is unworthy of consideration before an intelligent Board of Presbyters of this Church, engaged in the grave duty of inquiring into the law of this Church, and into the conduct of one of her ministers. The canon in question is designed to prevent intrusion by one minister into the parochial cure of another. It is intended to prevent disturbance, from rivalry and conflict, and from the officiating of a strange clergyman under circumstances calculated to give trouble to a peaceful minister, and to interfere with the quiet and order of his parish. We know from history that this was the design of the canon in its present form, and that its later modifications were suggested by the rude action of a minister of this Church in another diocese, who refused the invitation of the parish clergyman to preach in his parish church, and persisted, in spite of his remonstrance, in going to preach in a neighboring place of worship of another religious body.

But if this canon be designed to afford protection from intrusion and disturbance, how could it do so if it allowed a minister of this Church to go into a city like New-Brunswick, and preach in any place he could find open to him, in spite of the protest of the two rectors, and in spite also of the kindly warning of the Bishop, provided only he did not push violently into one of the parochial churches, nor into one of the houses of the recognized parishioners?

Suppose that a young clergyman, with the rashness so natural to youth and a fiery temper, and to narrow views of Christian truth, should determine in his own mind that the two ministers in New-Brunswick were not preaching the pure Gospel of Christ, and, regardless of fear or favor, to lift up the true standard of the cross. Suppose he should betake himself to a Methodist meeting-house in the near neighborhood of the two ministers of that city, for the purpose of using that edifice from time to time as a secure citadel from which he might launch forth his burning arrows—send out his more than ambiguous words to destroy, if possible, the confidence of the people in their pastor—to turn their heads with new-fangled ideas of religion, to inflame their passions, and, in time, to stir up and organize a violent opposition against the peaceful, steady-going ministers of God's Church—would such a thing be proper to be allowed? And knowing what we do of human nature, and of certain phases of religious opinion and character, could we give that church credit for wisdom and foresight which provided no safeguard against such a peril—which did nothing in advance to check and restrain turbulent and heady tempers? If there were no such canon in existence in this Church, it would be her duty to enact one with the least possible delay. So long as she could continue without it, she would be an exception to all the true branches of the one Catholic and Apostolic Church since the time of the Apostles. She would be leaving both her shepherds and her sheep exposed to wolves. And still further we may say that, if the Church had no canon on this subject, or if it were really one of doubtful interpretation, it would yet be the duty of a minister of this Church to abstain from acts which must needs be regarded as intrusive, disturbing, and impertinent toward his brethren.

Had a clergyman of this Church a hundred times the amount of talent and energy usually found in any one man, he might yet expend all his talent and all his energy to the extremest bounds of his power, in recognized and lawful fields of effort and duty, without once violating any canonical law, or overpassing any one limit of fraternal courtesy or Christian kindness.

The Apostle exhorts us to be "courteous," to "look not every man on his own things, but every man also on the things of others"

—"to let nothing be done through strife or vain-glory"—and we may fully recognize any plea of zeal and self-devotion, and yet affirm that there is nothing in the Gospel which requires or encourages Christian ministers to be rude and intrusive toward each other. But, if we have a canon which, in the most express terms, meets the peril just referred to, and provides a safeguard against it—a canon which has history, explicit phraseology, and cogent reasons, all pointing to one obvious interpretation—then what are we to think of the clamor with which that interpretation has been assailed? What are we to think of the Christian judgment and temper of those who have chosen to denounce Bishops and clergy, and all in both dioceses connected with these proceedings—proceedings entered upon with much reluctance, and simply to vindicate the law, and to maintain the needful discipline and order of the Church? What, we say, are we to think of those who denounce Bishops and clergy, complainers and triers, as if they cared nothing for the law and order of the Church; as if they had no conscience, no rectitude; and as if their one great object had been to persecute and humble an opponent? Such imputations in such a case would be little creditable to the rude conflicts of a secular court. Coming from clergymen, they excite our special wonder. When the letter of the law, and the reason and necessity of the case, supply a very obvious justification of the action of Christian men, the imputing of evil motives simply implies that prejudice and passion have blinded the judgment, if they have not done something still worse.

It is no doubt true that offenses against this canon have sometimes been allowed to pass without notice.

Such offenses may be committed through inadvertence and inconsideration, and form no part of a settled design or purpose. They may not be done in defiance of protest and warning; or they may occur at a time when the individual offending stands almost alone in his disposition to trifle with the settled law and order of the Church.

The law may have been thought difficult of application in a great city such as this, where parish boundaries are almost obliterated, and where the effect of an irregular act, in disturbing the peace of neighboring parishes, is almost lost in the vastness of the crowd of ministers, churches, and people. In such cases, and in others like them, presbyters may not have cared to complain, and the authorities of the Church may not have thought it necessary to interpose. But no one had any right to infer, from such omissions to complain or to prosecute, that the law was regarded as obsolete, or as virtually abrogated. There is abundant evidence that the law was not generally looked upon in the Church as a nullity; and that it was considered

as intended to apply to precisely such cases as that which was complained of in New-Brunswick.

But if some irregularities may be borne with, and allowed to pass without notice, in times when there is nothing like organized effort to break through the settled principles and usages of the Church, the case is altogether different when there is an avowed determination to ignore or to change those principles and usages. Then it becomes the imperative duty of those who are charged with the care of the discipline of the Church to see to it that her laws are respected. Then it becomes a grave question whether the private fancies, the self-will and passion of a few individuals shall be allowed to overrule the principle and government of the Church, or whether that government shall be maintained, at whatever cost to the misguided individuals who seek to trouble it.

And if individuals suffer from these proceedings, or if the tranquillity of the Church is temporarily disturbed by them, who is responsible for the suffering or for the disturbance? Surely those who, by their violations of law and order, have made an appeal to formal tribunals necessary, and not those who have merely yielded, and yielded reluctantly, to the obligation forced upon them to take measures for the maintenance of the Church's order and discipline.

Were it not for the studied efforts which have been made to mislead the popular judgment, it would be quite unnecessary to remind you that you are not censured for preaching the Gospel; that you are not censured for preaching the Gospel in another religious edifice than one expressly devoted to the use of this Church. Had that edifice been in a remote rural district, far distant from any clergyman or place of worship of this Church, and had you accepted an invitation to occupy the edifice for one or more services, in order to afford the ministrations of the Church to that neighborhood, there would have been no law to condemn you for doing so, and no reason for complaining of you.

You are censured for intruding into the parochial cure of your brother presbyters, in spite of their rightful protest, and contrary to the law of this Church.

It may be said that this is severe punishment to inflict, and that these are troublesome proceedings to disturb the Church with on account of so trifling an act as that of preaching in a Methodist meeting-house, or on account of a single act of irregularity. That is a very superficial way of estimating the meaning and uses of punishment and discipline. You are arraigned and censured, not merely because of the inherent importance of that one act taken by itself, but you are arraigned and censured in order that acts of that kind

may not become common in the Church, in order that her peace may not be permanently destroyed, the discipline overthrown, and her laws recklessly trampled under foot.

Such objects are important enough to justify severer measures and more troublesome proceedings than even these have been, should they become necessary to maintain the government and order of the Church.

In the course of the discussions and appeals connected with the case, a great deal has been said about the unrestricted liberty of preaching the Gospel, and the imperative duty of preaching it under any and all circumstances. These are fine, sounding words, which find a ready entrance into the ears of unthinking people. But, as often happens with such harangues, they have in them very little reason. In every state of society in which we may be placed, whether civil or ecclesiastical, we find ourselves abridged of some of our natural liberty. There can be no society without law and order; and if we would enjoy the blessings of the society, we must comply with the conditions—we must conform to its rules. We can not take refuge in our neighbor's house, nor sit down to refresh ourselves at his table without his permission. To appropriate to ourselves any thing in which he has acquired a property, is to expose ourselves to condemnation and punishment. If we become members of the Church of God, and much more if we become its ministers, we must conform to its truth, its order, its discipline. Our liberty is restrained. We are no longer independent thinkers, free to follow any wayward fancy of our own. We are not left at liberty to preach any kind of doctrine which our narrow and partial minds may invent. The main parts of our duty in the priesthood are all plainly and precisely set forth for us, and we are required to keep within the limits prescribed to us. Under as solemn circumstances as any in which man can be placed in this world; that is, when we are before the altar, just previous to the imposition of hands for the holy priesthood, we make our vow that, by the help of the Lord, we will give our faithful diligence always so to minister the doctrine and sacraments, and the discipline of Christ, as the Lord hath commanded, and as this Church hath received the same.

"As this Church hath received the same." We are tied up to that, we are not free. If we can not teach her doctrine fairly and justly, as is deduced by her formularies, and taught by her great divines, without false glosses and distorted interpretations of our own, then we are bound to renounce her ministry. And, again, if we can not submit to her law, in regard to the methods and limitations of our agency as her ministers; if we can not preach where she ordains us to preach, and abstain from preaching where she forbids us to preach, (forbids, because even the preaching of the Gospel may be turned by

men's passions into discord and sin, and may, under certain circumstances, become a breach of charity and an offense against God;) if we can not minister in a spirit of dutiful reverence and obedience, keeping far within the limits of law and order, "giving no offense in any thing, that the ministry be not blamed," then better a thousand times would it be, for us and for the Church, that we should turn aside from the ministry of peace and expend our energies upon the obscurest and lowliest mechanical craft. The fortunes of any individual or set of individuals, in any one age or country, are of trifling importance compared with the permanent order and well-being of the great spiritual body of Christ. How many glorious saints of God have made full proof of their faith and love and self-devotion, in every age of the Christian Church, and left their bright examples for the joy and consolation of the faithful in all after-times! They shrunk from no self-sacrifice; they braved every peril; they were mighty in their labors, and often in their sufferings; but they found ample room and range enough for their almost superhuman exertions, without violating any law of the Church, and without exalting themselves above that precept which enjoins us to be "courteous" toward our brethren, and indeed toward all men.

These observations, extended much farther than would have been necessary, but for the efforts that have been made to confuse a very plain question of order and discipline, must now be brought to a conclusion. We have felt ourselves obliged to be distinct and emphatic, but we have had no wish to be severe. We have no feeling in our heart that would prompt us to be so. If there be any severity in appearance, it is the severity to which the truth in its application to individuals and cases will sometimes clothe itself. You will utterly mistake the whole character of these proceedings, from beginning to end, the motives in which they originated, and the spirit in which they have been conducted and concluded, if you attribute them to any unkind personal feeling, or to any sinister motive connected with theological opinion or party conflict; indeed, the judgment and temper which could ignore the plain facts and principles of this case, and ascribe all these measures to narrow personal or party passions, would be little to be envied. Should you find it consistent with your views and feelings, as we earnestly hope and pray you may, to prosecute your work in a spirit of loyalty to the principles, discipline, and usages of the Church of which you are a minister, we, for our part—and we believe we speak the mind of the whole Church—would find only unmixed satisfaction in extending sympathy, encouragement, and hearty commendation to every useful effort you might be enabled to make.

In regard to the future stability of our branch of the Church in all her great features—her doctrines, ministry, worship, and discipline

—we have the unspeakable comfort of resting in quiet in the fullest assurance.

The ephemeral excitements of to-day are forgotten to-morrow. The short-lived and feeble individuals who fancy that they are inaugurating great changes, if not great revolutions, quickly pass away, and the city of God is seen standing unharmed; every wall and bulwark and tower unmutilated; only rising and expanding, and extending herself with a strange, miraculous growth; peopled with myriads of busy hearts and hands; animated with the working of lofty spirits; vocal with praise; bright with a divine peace and joy; and becoming, beyond all human anticipation, a mighty power on the earth. For the Church we have no fear. She is safe under the care of her Lord, and in the strength of her great principles.

But for individuals we are often moved with an anxious concern; how much effort may be wasted, how much good may be marred, how much individual Christian peace may be ruined, how much character may be lost in passionate undertakings, which have a show of zeal and self-devotion, but which have a fatal defect as being misdirected and wrong in principle.

With a paternal interest and affection, which we have never ceased to feel for you since the day when we had the satisfaction of receiving you into the sacred ministry, we would express our hope, as we are very ready to intimate our trust, that your future career in your high and most holy calling will be blameless and harmless · bright and long-continued in ever-increasing usefulness and honor, full of the fruits of righteousness to the glory of God, and to the enlargement of his blessed kingdom on earth. Be assured that we shall ever be ready to sympathize with you in your trials, and to uphold you in every rightful endeavor to accomplish the work given you to do. Every feeling we have in our heart toward you will prompt us to rejoice when you rejoice—to weep with you when you weep. The all-merciful Lord grant that your days of sorrow may be few—your days of joy and thankfulness may be many!

And now, the God of Peace, who brought again from the dead our Lord Jesus Christ, the Great Shepherd of the sheep, through the blood of the everlasting Covenant, make you perfect in every good work, to do his will, working in you that which is well-pleasing in his sight; through Jesus Christ, to whom be glory forever and ever. Amen.

Rev. Dr. Tyng went forward and handed Bishop Potter the following Protest, which he was not permitted to read, but which the Bishop received in his hand.

PROTEST AND APPEAL.

To the Right Reverend Horatio Potter, D.D., Bishop of the Protestant Episcopal Church in the Diocese of New-York:

Right Rev. Sir: It has been your pleasure to "approve" of the "findings" of this court of presbyters, and you have now administered the sentence of "admonition," "recommended" by them against the respondent.

This is your own act and your own responsibility. I, Stephen H. Tyng, D.D., a presbyter of the Protestant Episcopal Church in the Diocese of New-York, and Rector of St. George's Church, in the city of New-York, and one of the counsel for this respondent, do most respectfully but firmly enter my solemn protest against this whole proceeding, now completed, from its commencement to its conclusion, as false in its allegations, unjust in its principle, uncanonical in its form, illegal in its transactions, iniquitous in its purpose, and voluntarily and persistently persecuting in its spirit, process, and development.

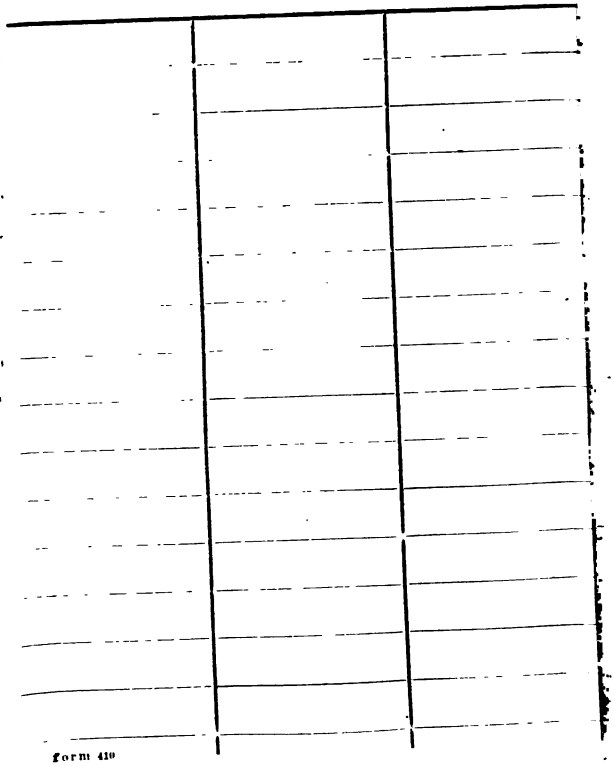
And I do solemnly appeal from this decision of this Court, and from this approval thereof, by the Bishop of this diocese, under the most earnest sense of the cruel injustice with which this respondent has been treated; to the supreme and final decision of the General Convention of the Protestant Episcopal Church in the United States; to the abiding sense of justice and righteousness in the individual members of this Church; to the conscientious review of the Christian Church throughout this land; to the record of future historic truth; to generations of advancing light and religious purity and power, which may come hereafter; and with the deepest humility, but with confidence unfeigned, to the judgment-seat of the Lord Jesus Christ, who is the one Great Head and Ruler of His Church, and whose approval can never be given to the persecution of the innocent, or to the oppression of the weak.

Given in the Church of the Transfiguration, in the city of New-York, this 14th day of March, A.D. 1868.

Stephen H. Tyng,
Rector of St. George's Church, in the City of New-York.

THE NEW YORK PUBLIC LIBRARY
REFERENCE DEPARTMENT

This book is under no circumstances to be taken from the Building



form 410